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No. 85-701

Supreme Court, U.S.

FILED

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**In the Supreme Court of the United States**

OCTOBER TERM, 1985

FEDERAL ELECTION COMMISSION, APPELLANT,

*v.*

MASSACHUSETTS CITIZENS FOR LIFE, INC., APPELLEE.

ON APPEAL FROM THE UNITED STATES COURT  
OF APPEALS FOR THE FIRST CIRCUIT

**JOINT APPENDIX**

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188 PP

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UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

Civil Action No. 82-609-G

FEDERAL ELECTION COMMISSION, PLAINTIFF,

v.

MASSACHUSETTS CITIZENS FOR LIFE, INC., DEFENDANT.

CHRONOLOGICAL LIST OF  
RELEVANT DOCKET ENTRIES

Date	Nr.	Proceedings
1982		
March 4	1	Complaint w/1st Req. for Answers to Interrog. and Prod. of Docs., FILED.
	5	SUMMONS ISSUED. (sent to Marshal)
	26	Summons returned wso/Def on 03/22/82, FILED.
April 12	2	Defendant's Answer and Counterclaims, FILED. (c/s)
	23	D's Request for Production of Docs, FILED. (c/s)
	4	D's 1st Set of Interrogs to P, FILED. (c/s)
May 6	5	Response to P's Request for Production of Docs, FILED. (c/s)
	6	Answers and Objections of Mass. Citizens for Life, Inc. to Interrog Prop by Federal Election Commission, FILED. (c/s)

Date	Nr.	Proceedings
1982		
	20 7	D's Request for Admissions, FILED. (c/s)
	28 8	P's Response to D's Request for Prod of Docs., FILED. (c/s)
	9	P's Objections and Answers to Interrogs Prop by Def, FILED. (c/s)
June 25	10	P, Federal Election Commission's Response to D's Request for Admissions, FILED. (c/s)
July 6	11	Supplementary obj ans ans of Fed Election Commission to ints propounded by deft, filed c/s
	16 13	Supplementary Response to D's Request for Prod of Docs, FILED. (c/s)
	22 14	Motion of D, Mass. Citizens for Life, Inc., for S/J, FILED. (c/s)
	15	Memorandum of Mass. Citizens For Life, Inc. in Support of Its Motion for S/J, FILED. (c/s)
	16	Affidavit of Anne Fox, FILED. (c/s)
	17	Affidavit of Philip D. Moran, FILED. (c/s)
	18	Affidavit of Marianne Rea-Luthin, FILED. (c/s)
Sept. 7	25	Transcript of Deposition of Marianne Rea-Luthin held on 08/19/82, FILED.
	26	Transcript of Deposition of Philip D. Moran held on 08/19/82, FILED.
	13 27	Request for Answers to Interrogs, FILED. (c/s)
Sept. 17	32	Answers and Objections of Mass. Citizens for Life, Inc. to 2nd Set of Interrogs Prop by Federal Election Commission, FILED. (c/s)

Date	Nr.	Proceedings
1982		
Nov. 1	34	P, Federal Election Commission's Motion for Summary Judgment, FILED. (c/s)
	35	Plaintiff's Memo of Points and Authorities in Support of its Motion For Summary Judgment and in Opposition to D's Motion for Summary Judgment, FILED. (c/s)
		GARRITY, J. re: P's Motion for Summary Judgment . . . Notice of Hear 11/26/82 at 2:00 p.m., FILED. (cc/cl)
	10 36	Joint Motion for Rescheduling of Oral Argument on Motions for S/J from 11/26/82 to 12/03/82, FILED. (assented to)
	11	GARRITY, J. re: Joint Motion for Rescheduling of Oral Argument . . . ALLOWED—hearing rescheduled for 12/20/82 at 3:00 p.m., FILED. (c/s)
	12 37	D, Mass. Citizens for Life, Inc's Opposition to P, Federal Election Commission's Motion for Summary Judgment, FILED. (c/s)
	22 40	D's Memo in Opposition to P's Motion for S/J and in Further Support of D's Motion for Summary Judgment, FILED. (c/s)
	41	Motion to Strike of Deft, Mass. Citizens for Life, Inc., FILED. (c/s)
Dec. 6	44	Federal Election Commission's Opposition to D's Motion to Strike, FILED. (c/s)
	45	P, Federal Election Commission's Reply to D's Memo in Opposition to P's Motion for S/J and in Further Support of D's Motion for S/J, FILED. (c/s)
	46	Submission of the Federal Election Commission of Supp. Authority in Support of Its Motion for Summary Judgment, FILED. (c/s)



Date	Nr.	Proceedings
1982		
17	47	Submission of the Federal Election Commission of Supplemental Authority in Support of Its Motion for Summary Judgment, FILED. (c/s)
30	48	D's Response to Submission of the Federal Election Commission of Supplemental Authority in Support of Its Motion for Summary Judgment, FILED. (c/s)
1983		
Jan. 11	49	P, Federal Election Commission's Reply to D's Response to Supp. Submission, FILED. (c/s)
Feb. 9		Ltr. to Clerk from Francis H. Fox enclosing copies of two recent cases to be forwarded to J. Garrity, FILED. (c/s)
1984		
May 7		Ltr. to Clerk from Charles N. Steele, Federal Election Commission advising Court of recent decision in Athens Lumber Co. v. Federal Election Commission, FILED. (c/)
June 29	50	GARRITY, J. OPINION: ORDERED that P's Motion for S/J is DENIED; Deft's Motion is GRANTED and Judgment to be entered for the Deft Dismissing the Complaint, FILED. (cc/cl, Full Publication)
	51	JUDGMENT ENTERED: Judgment for the Deft ENTERED. Complaint Dismissed FILED. (cc/cl)
Aug. 27	52	P's NOTICE OF APPEAL, FILED. (c/s)
Sept. 6		Certified copy of docket entries and original pleadings forwarded to the Court of Appeals.

UNITED STATES COURT OF APPEALS  
FOR THE FIRST CIRCUIT

No. 84-1719

FEDERAL ELECTION COMMISSION,  
PLAINTIFF, APPELLANT,

v.

MASSACHUSETTS CITIZENS FOR LIFE, INC.,  
DEFENDANTS, APPELLEES.

CHRONOLOGICAL LIST OF  
RELEVANT DOCKET ENTRIES

Date	Filings—Proceedings
Aug. 30	Copy of notice of appeal and district court docket entries received and filed. Case docketed. Notices mailed. (1b)
Sept. 6	Record on Appeal in One Volume received and filed. Notices mailed (ah)
Dec. 13	Brief for appellant, and joint appendix in volumes I&II, received and filed. Notices mailed. (sb)
Jan. 21	Motion of the Reporters Committee for Freedom of the Press National Association of Broadcasters Radio-Television News Directors Association Associated Press Managing Editors for Leave to File a Brief as <i>AMICI CURIAE</i> in Support of Appellee and for Leave to Participate in Oral Argument, received and filed. (ah)
Jan. 21	Motion of the civil liberties union of Massachusetts for leave to file a brief amicus curiae, received and filed. (sb)

Date	Filings—Proceedings
Jan. 21	Brief for appellees, Mass. Citizens for Life, Inc. received and filed. (ah)
Jan. 22	Home Builders Association of Mass., Motion requesting leave to file as amicus curiae received and filed. (lr)
Jan. 22	Motion of National Rifle Association of America (NRA) for leave to file a Brief Amicus Curiae, received and filed. (al)
Feb. 6	ORDER (Breyer, J) The motions of the National Rifle Association, the Civil Liberties Union of Massachusetts, the Home Builders Association of Massachusetts and the Reporters Committee for freedom of the Press et al., for leave to file briefs as Amici Curiae are granted. Reporters' Committees motion to participate in oral argument is denied; and enlarging the time for filing the reply brief for appellant to and including February 21, 1985. Notices mailed. (al)
	Amicus Curiae Brief, received and filed. (al)
	Brief in support of appellee for Amici Curiae, received and filed. (al)
	Brief Amicus Curiae of the Civil Liberties union of Mass., received and filed. (al)
	Brief of amicus curiae, Home Builders Association of Mass. in support of appellee, Mass citizens for life, inc., received and filed. (al)
Feb. 11	Reply brief for appellant, received and filed. (sb)
Mar. 25	Assigned for hearing at the April 1985 session. (kf)
Apr. 2	Heard by Breyer, Torruella and Rosenn, JJ. (sb)
July 31	JUDGMENT: The judgment of the district court is affirmed. Opinion of the Court, By Rosenn, J. Notices mailed. (al)
Aug. 22	Mandate issued. Copy filed. Taxation of Costs filed. Original papers returned to District Court. Notices mailed. (lr)

Date	Filings—Proceedings
Aug. 28	Notice of appeal to the Supreme Court, received and filed. (aw)
Nov. '5	Notice of filing an appeal from the Supreme Court #85-701, October 25, 1985, received and filed. (sb)
Jan. 23	Order of the Supreme Court, January 13, 1986, the statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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Civil Action No. 82-0609G

FEDERAL ELECTION COMMISSION  
1325 K Street, N.W.  
Washington, D.C. 20463, PLAINTIFF

v.

MASSACHUSETTS CITIZENS FOR LIFE, INC.  
313 Washington Street  
Boston, Massachusetts, DEFENDANT

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DEFENDANT'S ANSWER AND COUNTERCLAIMS

DEFENDANT'S ANSWER

Now comes the defendant in the above-captioned action, Massachusetts Citizens for Life, Inc. ("MCFL"), and hereby answers the complaint of the Federal Election Commission ("FEC") as follows:

1. Paragraph 1 contains allegations of law as to which no responsive pleading is required. To the extent that a responsive pleading may be required, MCFL admits that the FEC invokes this court's jurisdiction as it states in the first sentence of paragraph 1, and that it has instituted the action as it states in the second sentence of paragraph 1.

2. MCFL admits the allegations in paragraph 2 of the complaint.

3. MCFL admits the allegations in paragraph 3 of the complaint.

4. Paragraph 4 contains allegations of law as to which no responsive pleading is required.

5. Paragraph 5 contains allegations of law as to which no responsive pleading is required.

6. Paragraph 6 contains allegations of law as to which no responsive pleading is required.

7. Paragraph 7 contains allegations of law as to which no responsive pleading is required.

8. With reference to the allegations in paragraph 8, MCFL states that it caused to be prepared, printed and distributed copies of a newspaper tabloid entitled "Special Election Edition" in September of 1978, and that Exhibit 1 attached to the complaint is a true copy thereof. MCFL denies all remaining allegations in paragraph 8.

9. With reference to the allegations in paragraph 9 as to the contents of the "Special Election Edition", MCFL states that the document speaks for itself. MCFL denies all remaining allegations in paragraph 9.

10. MCFL admits the allegations in the first line of paragraph 10 and denies the allegations in the second line of paragraph 10.

11. With reference to the allegations in paragraph 11 regarding the cost of the "Special Election Edition", MCFL states that it spent approximately \$475.00 for preparation, \$2,113.75 for printing and \$6,841.91 for mailing. MCFL denies all remaining allegations in paragraph 11.

12. With reference to the allegations in paragraph 12, MCFL states that it caused to be prepared, printed, and distributed in September of 1978 a 4-page amended version of the aforementioned "Special



Election Edition" entitled "Special Election Edition—Complimentary Partial Copy", and that Exhibit 2 to the complaint is a true copy thereof. MCFL denies all remaining allegations in paragraph 12.

13. With reference to the allegations in paragraph 13 as to the content of the "Special Election Edition—Complimentary Partial Copy", MCFL states that the document speaks for itself. MCFL denies the remaining allegations in paragraph 13.

14. With reference to the allegations in paragraph 14 regarding the cost of the "Special Election Edition—Complimentary Partial Copy", MCFL states that it spent \$375.00 for printing, and MCFL denies the remaining allegations in paragraph 14.

15. With reference to the allegations in paragraph 15, MCFL says it spent \$9812.76. MCFL denies the allegations in the second sentence of paragraph 15.

16. With reference to the allegations in paragraph 16, MCFL admits that the FEC notified MCFL that it had determined that there was reason to believe that MCFL violated 2 U.S.C. § 441b(a), and further admits that the FEC initiated an investigation into this matter. MCFL is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 16, and therefore it denies the same.

17. With reference to the allegations in paragraph 17, MCFL admits that the FEC notified MCFL that it determined that there was reasonable cause to believe that MCFL had violated 2 U.S.C. § 441b(a). MCFL is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 17, and therefore it denies the same.

18. With reference to the allegations in paragraph 18, MCFL admits that the case was not conciliated, that the FEC purported to find probable cause to believe that MCFL violated 2 U.S.C. § 441b(a), and that MCFL was sent notification of this finding. MCFL denies all remaining allegations in paragraph 18.

19. With reference to the allegations contained in paragraph 19, MCFL admits that the case was not conciliated after the FEC purported to find probable cause. MCFL denies all remaining allegations in paragraph 19.

20. With reference to the allegations in paragraph 20, MCFL admits that MCFL and the FEC did not agree upon the terms of a mutually acceptable conciliation. MCFL is without knowledge or information sufficient to form a belief as to the truth of all remaining allegations contained in paragraph 20, and therefore it denies the same.

## AFFIRMATIVE DEFENSES

### *FIRST AFFIRMATIVE DEFENSE*

The complaint fails to state a claim upon which relief can be granted, and MCFL is entitled to judgment in its favor as a matter of law.

### *SECOND AFFIRMATIVE DEFENSE*

MCFL has not violated 2 U.S.C. § 441b because whatever money was spent did not constitute an "expenditure" within the meaning of 2 U.S.C. § 441b.

### *THIRD AFFIRMATIVE DEFENSE*

MCFL has not violated 2 U.S.C. § 441b because its tabloids at issue here fall within the exception to the

definition of "expenditure" for news stories, editorials or commentaries found in 2 U.S.C. § 431, and therefore MCFL's use of funds to prepare, print, and distribute its tabloids was not an expenditure within the meaning of 2 U.S.C. § 441b.

#### *FOURTH AFFIRMATIVE DEFENSE*

MCFL has not violated 2 U.S.C. § 441b because its tabloids fall within the exception to the definition of "expenditure" for communications by membership organizations found at 2 U.S.C. § 431, and therefore MCFL's use of funds to prepare, print and distribute its tabloids was not an expenditure within the meaning of 2 U.S.C. § 441b.

#### *FIFTH AFFIRMATIVE DEFENSE*

2 U.S.C. § 441b is unconstitutional on its face as a vague and overbroad infringement on the freedom of speech guaranteed to MCFL and its members by the First Amendment to the United States Constitution.

#### *SIXTH AFFIRMATIVE DEFENSE*

2 U.S.C. § 441b is unconstitutional on its face as a vague and overbroad infringement on the freedom of association guaranteed to MCFL and its members by the First Amendment to the United States Constitution.

#### *SEVENTH AFFIRMATIVE DEFENSE*

2 U.S.C. § 441b is unconstitutional on its face as a vague and overbroad infringement on the freedom of press guaranteed to MCFL and its members by the First Amendment of the United States Constitution.

#### *EIGHTH AFFIRMATIVE DEFENSE*

If 2 U.S.C. § 441b is construed to prohibit MCFL's preparation, publication, and/or distribution of its tabloids, then that section is unconstitutional as applied because it violates the freedom of speech guaranteed to MCFL and its members by the First Amendment to the United States Constitution.

#### *NINTH AFFIRMATIVE DEFENSE*

If 2 U.S.C. § 441b is construed to prohibit MCFL's preparation, printing and/or distribution of its tabloids, then that section is unconstitutional as applied because it violates the freedom of association guaranteed to MCFL and its members by the First Amendment to the United States Constitution.

#### *TENTH AFFIRMATIVE DEFENSE*

If 2 U.S.C. § 441b is construed to prohibit MCFL's preparation, printing and/or distribution of its tabloids, then that section is unconstitutional as applied because it violates the freedom of press guaranteed to MCFL and its members by the First Amendment to the United States Constitution.

#### *ELEVENTH AFFIRMATIVE DEFENSE*

2 U.S.C. § 441b is unconstitutional because it violates the rights of MCFL and its members to the equal protection of the laws guaranteed by the Fourteenth Amendment to the United States Constitution.

#### *TWELFTH AFFIRMATIVE DEFENSE*

2 U.S.C. § 431 is unconstitutional because it violates the rights of MCFL and its members to the



equal protection of the laws guaranteed by the Fourteenth Amendment to the United States Constitution.

WHEREFORE, MCFL prays that the court declare the provisions of 2 U.S.C. §§ 441b and 431 relied upon by the FEC unconstitutional, facially and as applied; that it dismiss this action with prejudice; that it award MCFL its reasonable costs and attorneys fees; and that it award MCFL such other and further relief as the court deems just and proper.

**MASSACHUSETTS CITIZENS  
FOR LIFE**

By its attorneys,

/s/ R.J. Cinquegrana  
Francis H. Fox  
E. Susan Garsh  
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Boston, MA 02110  
(617) 357-9300

Dated: 4/12/82

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

---

Civil Action No. 82-0609-G

FEDERAL ELECTION COMMISSION, PLAINTIFF

*v.*

MASSACHUSETTS CITIZENS FOR LIFE, INC., DEFENDANT

---

**ANSWERS AND OBJECTIONS OF MASSACHUSETTS  
CITIZENS FOR LIFE, INC. TO INTERROGATORIES  
PROPOUNDED BY FEDERAL ELECTION COMMISSION**

Massachusetts Citizens for Life, Inc. ("MCFL") answers the Interrogatories propounded by the Federal Election Commission ("FEC") pursuant to Fed. R.Civ.P.33 as follows:

*INTERROGATORY NO. 1*

Please state whether MCFL is a corporation.

*ANSWER TO INTERROGATORY NO. 1*

Yes.

*INTERROGATORY NO. 2*

If the answer to No. 1 is yes, please state the following:

- a. when was MCFL incorporated; and
- b. in what state is MCFL incorporated.

## ANSWER TO INTERROGATORY NO. 2

- a. 1973
- b. Commonwealth of Massachusetts.

## INTERROGATORY NO. 3

Please identify the persons comprising the board of directors of MCFL during each year from 1976 to the present.

## ANSWER TO INTERROGATORY NO. 3

See list attached hereto as *Exhibit A*.

## INTERROGATORY NO. 4

Please identify the officers of MCFL during each year from 1976 to the present stating the office held.

## ANSWER TO INTERROGATORY NO. 4

See list attached hereto as *Exhibit A*.

## INTERROGATORY NO. 5

Please state whether MCFL has ever claimed to be organized as a membership corporation.

## OBJECTION TO INTERROGATORY NO. 5

MCFL objects to Interrogatory No. 5 on the grounds that the word "claimed" is vague and ambiguous.

## ANSWER TO INTERROGATORY NO. 5

Without waiving its objection, MCFL answers the interrogatory without reference to the word "claimed". MCFL states that, from its inception, it has had members.

## INTERROGATORY NO. 6

If the answer to No. 5 is yes for any of the years from 1976 to the present, please state for each such year the following:

- a. how many classes of membership did MCFL claim;
- b. how many members did MCFL claim for each class;
- c. what were the requirements for membership claimed by MCFL for each class; and
- d. what were the rights and privileges accorded each class of members claimed by MCFL.

## OBJECTION TO INTERROGATORY NO. 6

MCFL objects to Interrogatory No. 6 on the grounds that the word "claim" is vague and ambiguous, and further, to the extent it seeks information for the period after 1978, said information is not relevant to the subject matter involved in the pending action.

## ANSWER TO INTERROGATORY NO. 6

Without waiving its objection, MCFL answers the interrogatory as follows without reference to the word "claim":

- a. 3 (1976-1979)  
2 (1980-1982)
- b. The number of members of MCFL constantly changes. For the periods listed below, the approximate membership is as follows:  
1976: Non-Contributing—26,750  
Contributing and Dues-paying—5,633

1977: Non-contributing—Not known at the present time.

Contributing and Dues-Paying—5,148

1978: Non-contributing—50,674

Contributing and Dues-Paying—5,986

1979: Non-contributing—53,916

Contributing and Dues-Paying—5,498

1980: Non-voting—53,332

Voting—6,321

1981: Non-Voting—50,816

Voting—7,003

1982: Non-voting—48,670

Voting—7,500

c. Non-contributing: Acceptance of MCFL's Statement of Purpose.

Contributing: Donation of any size.

Dues-paying: Annual Contribution of \$15.00.

Non-voting: Those persons who wish to assist the corporation in furtherance of its purposes as set forth in the Articles of Organization, and who affirmatively express in writing a specific and unambiguous desire to become a member of the corporation.

Voting:

Each member who makes an initial contribution to the corporation of at least \$15.00 shall thereupon become a voting member of the corporation for the twelve-month period commencing on the date of such initial contribution.

d. All members are entitled to those rights and privileges, if any, of members as provided by state law. All contributing members are entitled to receive all editions of the MCFL newsletter. All members are entitled on occasion to receive editions of the newsletter. All members are entitled to participate in MCFL fundraising and educational events and are encouraged to design and execute similar activities. With respect to the period 1980 to the present, a description of the rights and privileges accorded each class of members may be derived or ascertained from the By-Laws of MCFL which will be produced for inspection or copying.

#### INTERROGATORY NO. 7

Please state for those persons whom MCFL considers members the following:

- a. is a specified amount of money required in dues from each class of members claimed by MCFL;
- b. how much are the dues and how often must dues be paid in order to retain membership in MCFL; and

- c. does MCFL retain a written list of persons which it claims as members.

#### *OBJECTION TO INTERROGATORY NO. 7*

MCFL objects to Interrogatory No. 7 on the grounds that the words "claimed" and "claims" are vague and ambiguous and, further, to the extent it seeks information for the period after 1978; said information is not relevant to the subject matter involved in the pending action.

#### *ANSWER TO INTERROGATORY NO. 7*

Without waiving its objection, MCFL answers the interrogatory as follows without reference to the words "claimed" and "claims":

- a. See answer to No. 6.
- b. See answer to No. 6.
- c. Yes.

#### *INTERROGATORY NO. 8*

Please state whether, in addition to the September, 1978 "Special Election Edition" and the September, 1978 "Special Election Edition—Complimentary Partial Copy," MCFL has disseminated any other editions dealing with federal elections.

#### *OBJECTION TO INTERROGATORY NO. 8*

MCFL objects to Interrogatory No. 8 on the ground that the phrase "dealing with federal elections" is vague and ambiguous and seeks information not relevant to the subject matter involved in the pending action.

#### *ANSWER TO INTERROGATORY NO. 8*

Without waiving its objection, MCFL states that the answer may be derived or ascertained from the newsletters of MCFL which will be produced for inspection or copying.

#### *INTERROGATORY NO. 9*

If the answer to No. 8 is yes, please state for each edition dealing with federal elections the following:

- a. the title of each edition;
- b. whether the edition concerned candidates for federal office;
- c. the total number of copies printed;
- d. the total number of copies disseminated;
- e. to whom the edition was disseminated;

#### *OBJECTION TO INTERROGATORY NO. 9*

See Objection to Interrogatory No. 8.

#### *INTERROGATORY NO. 10*

Please state whether MCFL has established a separate segregated fund.

#### *OBJECTION TO INTERROGATORY NO. 10*

MCFL objects to Interrogatory No. 10 on the ground that it seeks information not relevant to the subject matter involved in the pending action.

#### *ANSWER TO INTERROGATORY NO. 10*

Without waiving its objection, MCFL states that it has established a separate segregated fund.



*INTERROGATORY NO. 11*

If the answer to No. 10 is yes, please state the following for any such fund:

- a. when the fund was established;
- b. the name under which the fund is registered;
- c. the identify [sic] of the officers or directors responsible for the operation of the fund; and
- d. whether the fund solicits contributions from persons claimed by MCFL to be members.

*OBJECTION TO INTERROGATORY NO. 11*

MCFL objects to Interrogatory No. 11 on the grounds that it seeks information not relevant to the subject matter involved in the pending action.

*ANSWER TO INTERROGATORY NO. 11*

Without waiving its objection, MCFL answers Interrogatory No. 11 as follows:

- a. May 17, 1980
- b. "Massachusetts Citizens for Life, Inc. Political Action Committee"
- c. The officers of the Fund for the 1981-1982 year are: Marianne Rea-Luthin, Chairman; Henry C. Luthin, Treasurer; Anne Fox, Assistant Treasurer. The Directors of the Fund are: Alice E. Brennan, Anne Fox, Marianne Rea-Luthin, Roderick P. Murphy, Leslie J. Payne, Joseph J. Reilly.
- d. The Fund solicits contributions only from Voting Members of MCFL, as that term is defined in MCFL's by-laws.

*INTERROGATORY NO. 12*

Please state how many times in each year from 1976 to the present MCFL distributed newsletters to persons claimed by MCFL to be members.

*OBJECTION TO INTERROGATORY NO. 12*

MCFL objects to Interrogatory No. 12 on the grounds that the word "claimed" is vague and ambiguous, and further, to the extent it seeks information for the period after 1978, said information is not relevant to the subject matter involved in the pending action.

*ANSWER TO INTERROGATORY NO. 12*

Without waiving its objections, MCFL answers the interrogatory as follows without reference to the word "claimed":

1976—8 times  
 1977—5 times  
 1978—4 times  
 1979—6 times  
 1980—3 times  
 1981—6 times  
 1982—1 to date.

*INTERROGATORY NO. 13*

Please state how many times in each year from 1976 to the present MCFL distributed newsletters to members of the general public.

*OBJECTION TO INTERROGATORY NO. 13*

MCFL objects to Interrogatory No. 13 on the grounds that, to the extent it seeks information for



the period after 1978, said information is not relevant to the subject matter involved in the pending action.

*ANSWER TO INTERROGATORY NO. 13*

Without waiving its objection, MCFL answers that MCFL does not distribute newsletters to members of the general public.

*INTERROGATORY NO. 14*

Please state the criteria which MCFL uses for determining to whom MCFL's newsletters are distributed.

*OBJECTION TO INTERROGATORY NO. 14*

MCFL objects to Interrogatory No. 14 on the grounds that, to the extent it seeks information for the period after 1978, said information is not relevant to the subject matter involved in the pending action.

*ANSWER TO INTERROGATORY NO. 14*

Without involving its objection, MCFL answers Interrogatory No. 14 as follows:

MCFL's newsletters are distributed to members of MCFL who have made a financial contribution to MCFL. On occasion MCFL also distributes its newsletter to its entire membership. MCFL also will provide a copy of its newsletters to individuals who request a copy.

*INTERROGATORY NO. 15*

Please identify the person or persons responsible for establishing the criteria for the distribution of MCFL's newsletter.

*OBJECTION TO INTERROGATORY NO. 15*

MCFL objects to Interrogatory No. 15 on the grounds that, to the extent it seeks information for the period after 1978, said information is not relevant to the subject matter involved in the pending action.

*ANSWER TO INTERROGATORY NO. 15*

Without waiving its objection, MCFL answers Interrogatory No. 15 as follows:

MCFL President and Members of the Executive Committee.

*INTERROGATORY NO. 16*

Please identify the person or persons responsible for compiling the mailing list for the September, 1978 "Special Election Edition."

*ANSWER TO INTERROGATORY NO. 16*

Priscilla Laveaga, 91 Cross Street, Belmont, Massachusetts 02178, Telephone: 484-2287.

*INTERROGATORY NO. 17*

Please state whether MCFL distributes its newsletter to any persons who do not pay dues to MCFL.

*OBJECTION TO INTERROGATORY NO. 17*

MCFL objects to Interrogatory No. 17 on the ground that, to the extent it seeks information for the periods after 1978, said information is not relevant to the subject matter involved in the pending action.

*ANSWER TO INTERROGATORY NO. 17*

Without waiving its objection, MCFL states that it does distribute its newsletters to persons who do not pay dues to MCFL.

*INTERROGATORY NO. 18*

If the Answer to No. 18 is yes, please state the following:

- a. the circumstances under which such distribution occurs; and
- b. the frequency with which such distribution occurs.

*OBJECTION TO INTERROGATORY NO. 18*

MCFL objects to Interrogatory No. 18 on the grounds that, to the extent that it seeks information for the period after 1978, said information is not relevant to the subject matter involved in the pending action.

*ANSWER TO INTERROGATORY NO. 18*

Without waiving its objection, MCFL answers Interrogatory No. 18 as follows:

- a. In order to inform all members of MCFL of the position of candidates for a variety of public offices on pro-life issues, at various times an edition of the MCFL newsletter is distributed to all members of MCFL.
- b. 1976—1  
1978—1  
1980—1

*INTERROGATORY NO. 19*

Please state whether MCFL distributed the "Special Election Edition" to any persons who do not pay dues to MCFL.

*ANSWER TO INTERROGATORY NO. 19*

Yes.

*INTERROGATORY NO. 20*

If the answer to No. 20 [sic] is yes, please state the following:

- a. were copies of the "Special Election Edition" distributed to any persons not previously present on any mailing list in the possession of MCFL;
- b. were they distributed to any persons who did not request to receive them; and
- c. if the answer to No. b. is yes, please state the circumstances under which such distribution occurred.

*ANSWER TO INTERROGATORY NO. 20*

- a. The "Special Election Edition" was distributed only to members whose names were either present on the MCFL mailing list or present on lists of those individuals who had indicated that they agreed with the MCFL statement of purpose; it is also possible that copies were provided to individuals who requested copies.
- b. Yes;
- c. The right to receive MCFL's newsletters was not necessarily communicated to an individual upon that person's becoming a member. Such a person, therefore, did not specifically request to receive newsletters, but did affirmatively accept MCFL's statement of purpose.

*INTERROGATORY NO. 21*

In your response to the Commission's request for information dated July 31, 1979, you stated that MCFL considered all those persons to be members of MCFL who agreed with MCFL's statement of purpose. Please state:

- a. what is MCFL's statement of purpose; and
- b. how MCFL determines whether a person agrees with its statement of purpose.

*ANSWER TO INTERROGATORY NO. 21*

As of the period of time referred to in Interrogatory 21:

- a. MCFL's Statement of Purpose was: "In recognition of the fact that each human life is a continuum from conception to natural death, the objective of MCFL is to foster respect for human life and to defend the right to life of all human beings, born and unborn, through educational, legislative, political and other forms of activity."
- b. MCFL determined that a person agrees with its Statement of Purpose when such person so signifies through signing forms, coupons, or petitions or through oral communications with MCFL.

*INTERROGATORY NO. 22*

In your response to the Commission's request for information dated July 31, 1979, you stated that MCFL determined whether a person was a member of MCFL "by a variety of ways." Please enumerate and describe all the ways employed by MCFL to determine whether a person is a member of MCFL.

*ANSWER TO INTERROGATORY NO. 22*

See Answer to Interrogatory No. 21 above.

*INTERROGATORY NO. 23*

Please state the number of members which MCFL has claimed on its membership rolls for each of the years from 1976 to the present.

*OBJECTION TO INTERROGATORY NO. 23*

MCFL objects to Interrogatory No. 23 on the grounds that the word "claim" is vague and ambiguous, and further, to the extent that it seeks information for the period after 1978, said information is not relevant to the subject matter involved in the pending action.

*ANSWER TO INTERROGATORY NO. 23*

Without waiving its objections, MCFL answers the interrogatory without reference to the word "claim".

The number of members of MCFL constantly changes. For the periods listed below, the approximate membership is as follows:

1976—32,383

1977—5,148 (contributing members only; the information as to non-contributing members is not available at this time)

1978—55,822

1979—59,414

1980—59,653

1981—57,819

1982—56,170.

/s/ Henry C. Luthin  
HENRY C. LUTHIN



MASSACHUSETTS )  
 ) ss.  
 )

Then personally appeared the above-named Henry C. Luthin, and states that he has read the foregoing Answers and that the contents thereof are true to the best of his knowledge, information and belief.

Before me,

/s/ Lesley Elizabeth Tucker  
 Notary Public  
 Commission expires  
 April 2, 1987

Objections signed this 6th day of May, 1982.

By its attorneys,

/s/ E. Susan Garsh  
 E. SUSAN GARSH  
 BINGHAM, DANA & GOULD  
 100 Federal Street  
 Boston, MA 02110  
 (617) 357-9300

UNITED STATES DISTRICT COURT  
 DISTRICT OF MASSACHUSETTS

Misc. Action No. 82-0609-G

FEDERAL ELECTION COMMISSION

v.

MASSACHUSETTS CITIZENS FOR LIFE, INC.

DEFENDANT'S REQUEST FOR ADMISSION

Defendant requests plaintiff to admit, pursuant to F.R.Civ.P. 36:

1. The two-page document appended hereto and marked "A" is a true and genuine copy of the certification to the Second Circuit Court of Appeals made by George C. Pratt, U.S. District Judge, Eastern District of New York, in "Federal Election Commission v. Central Long Island Tax Reform Immediately Committee, et al," Docket No. 78 C 1658.

2. The 28-page document appended hereto marked "B" is a true and genuine copy of pages 54 through 82 of the "Findings of Fact" made by Judge Pratt in the said case.

3. The documents attached hereto and marked "Stip. Exhibit" AA, BB, CC, DD, EE, FF, GG, HH, HH-1, II, JJ, KK, LL and Defendant CLITRIM Exhibits C and D are true and genuine copies of the exhibits attached to pages 54 through 82 of the "Findings of Fact" referred to in the preceding paragraph.

4. The said Findings were made on or about August 22, 1979, following a trial in the said case on June 25-28, 1979.

5. Each of the numbered findings was true as of June 25-28, 1979.

6. Each of the numbered findings was true as of August 22, 1979.

7. Each of the numbered findings was true as of November, 1978.

By its attorneys,

/s/ Francis H. Fox  
FRANCIS H. FOX

/s/ E. Susan Garsh  
E. SUSAN GARSH  
BINGHAM, DANA & GOULD  
100 Federal Street  
Boston, MA 02110  
(617) 357-9300

[Certificate of Service Omitted in Printing]

## EXHIBIT A

### UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK

\_\_\_\_\_  
Docket No. 78 C 1658

FEDERAL ELECTION COMMISSION, PLAINTIFF,

—against—

CENTRAL LONG ISLAND TAX REFORM  
IMMEDIATELY COMMITTEE ET AL., DEFENDANTS.

### CERTIFICATION TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Pursuant to orders of the United States Court of Appeals for the Second Circuit dated April 23, 1979 and May 2, 1979, the undersigned hereby certifies to the circuit court the following:

1. Clerk's file, including transcripts of evidentiary hearings. This is under separate cover.

2. Hearing exhibits as follows:

Court's Exhibits 1, 2 & 3 with exhibits attached thereto.

Plaintiff's Exhibits Y-1, 1-5, 8-22(o).

Defendants' and Intervenors' Exhibits A, B, D-Y, BB & CC.

All of those exhibits are under separate cover.



3. Summary of Procedural History (infra, p. 3)
4. Statement of Constitutional Issues (infra, p. 7)
5. Statement of Statutory Questions (infra, p. 9)
6. Findings of Fact (infra, p. 11)

Dated: Westbury, New York  
August 22, 1979

/s/ George C. Pratt  
GEORGE C. PRATT  
U. S. District Judge

## EXHIBIT B

\* \* \* \* \*

### VII. OTHER ISSUE-ORIENTED ORGANIZATIONS AND THEIR ACTIVITIES

#### A. ACLU

1. Ira Glasser is currently the Executive Director of the American Civil Liberties Union (ACLU). From 1968 until 1978, he was Associate Director and then Executive Director of the New York Civil Liberties Union. He has had wide experience running and dealing with volunteer, membership organizations, and observing the way they function. (TR 392-3).

2. The ACLU is non-partisan, issue-oriented organization.

3. Ira Glasser qualified as an expert witness on the functioning of voluntary, membership organizations. (Glasser Testimony, Trial Transcript at p. 395).

4. In his experience, he has observed that a wide variety of non-partisan, issue-oriented groups and organizations in America, who do not endorse, support or oppose partisan candidates, nevertheless, publicly comment on the official conduct of government officials. (TR 398).

5. He has also observed that a wide variety of non-partisan, issue-oriented groups, who do not endorse, support or oppose partisan candidates, take positions on public issues or questions which may also be issues in a partisan electoral campaign. (TR 399).

6. Many non-partisan, issue-oriented groups publish and comment upon, criticize, or praise the voting records of elected officials on issues of interest and concern to the relevant group (TR 393).

7. Such activity intensifies during the time of election campaign, because that is when citizen interest in public issues is at its peak. (TR 401).

8. The ACLU and the NYCLU, in their organizational newsletter, periodically rate the civil liberties performance of elected officials. (TR 408).

9. Such newsletters (e.g., Exs. GG & HH attached to Ct.Ex.1) are distributed to ACLU members, to the news media, to public officials and to members of the public. (TR 412).

10. Such newsletters are frequently produced and distributed in the Fall of election years. [The legislative sessions in those years usually run through the Summer, and the "box scores" cannot be put out until the Fall.] Their effectiveness and the interest they generate is increased when published during a campaign period. (TR 402).

11. The purpose of such activity is to publicize the organization's views and positions on civil liberties issues in order to influence public opinion and official action on such issues. (TR 411).

12. The purpose of such activities is not to influence the election or defeat of any specific candidate, but such activities are intended to inform and may influence the way citizens vote in an election. They also seem to influence actions by legislators. (TR 406-7).

13. Based on his expertise in the working of voluntary membership organizations, and their local committees, branches and chapters, Mr. Glasser is aware of the difficulty of sustaining citizen interest and participation at the grass roots level, particularly on controversial issues. (TR 413).

14. Such local volunteer committees and chapters are fragile enterprises. Any impediment may cause

individuals to refrain from activity or to cease their activity. (TR 413).

15. In Mr. Glasser's opinion the burden of record-keeping, reporting and certification and the prospect of compliance with disclosure requirements of 2 USC Sections 434(e) and 441d would deter and chill members of committees and chapters from engaging in activity which would bring those requirements into play, particularly in the case of unpopular, controversial or "parish" organizations. (TR 414).

16. In Mr. Glasser's opinion, people do not want to register and file forms with the government or disclose their names to the government in order to engage in free speech activity because of principle, fear, or inconvenience. (TR 416).

17. If the ACLU and its affiliates had to comply with the requirements imposed by 2 U.S.C. Section 434(e), because of their "box scores" on elected officials, they could not do so because of the policy against disclosure of members and contributors and because they could not relate expenditures to particular issues. Instead, they would bring those requirements into effect. (TR 417).

18. Compliance with such requirements would also pose severe record-keeping and accounting burdens upon the ACLU. (TR 417).

19. Since the ACLU is a corporation, the ACLU's box score or voting record activity brings it within the coverage of the Act, it could conceivably be charged with violating the ban on any corporation's making a "contribution or expenditure in connection with" a federal election. 2 U.S.C. § 441b(a). The only way to avoid the problem would be to set up a "political action committee," which would directly conflict with the ACLU's constitution and by-laws

which require it to be wholly non-partisan. (TR 420).

20. Although non-partisan, issue-oriented groups do not support or oppose candidates for elective office, such groups seek to have their issues become campaign issues. (Glasser Testimony, Trial Transcript at p. 400).

21. The reason for this is that electoral campaigns can serve to focus public attention on the issues that the group is concerned about. (Glasser Testimony, Trial Transcript, pp. 400-402).

22. The use of "box score" or voting records information by issue-oriented groups enhances the ability of those groups to influence the official conduct of the elected officials whose record is rated. The reason for this is that such officials are more responsive to issue group arguments if the officials know that their voting records will be set forth by the issue group at the conclusion of the legislative session. (Glasser Testimony, Trial Transcript at p. 406).

23. Local volunteer committees and groups are notoriously unwilling to fill out forms and records, even those required by the organizations with which they are affiliated. (Glasser Testimony, Trial Transcript at p. 414).

24. If the ACLU had to set up a political fund or political committee in order to continue its voting records activity, not only would its own constitution and by-laws prohibit that, but such action would jeopardize its tax status and undermine its reputation and standing as a non-partisan, issue-oriented group. (Glasser Testimony, Trial Transcript at p. 419).

25. Over the years, ACLU has published a number of newspaper advertisements, articles and reports rating and evaluating the performance of elected public officials:

- (a) In 1971, it published two full-page advertisements in *The New York Times*, sharply critical of the activities of former Vice President Nelson Rockefeller, the then-Governor of New York, and the state legislative. (Exhibits AA and BB).
- (b) In October, 1972—a month before the nationwide federal elections—it published an advertisement in *The New York Times* sharply criticizing President Nixon's "anti-busing" stand. The advertisement contained an "Honor Roll" of approximately 100 members of Congress who had opposed the President on that issue, and urged public support for those Representatives. (Exhibit CC).
- (c) In 1973, a three-judge court ruled that "plaintiff organizations, on the basis of the advertisements are not subject to Title III regulation." (*ACLU v. Jennings*, 366 F. Supp. 1041, 1057).
- (d) In the fall of 1973, the ACLU sponsored a series of full-page advertisements in *The New York Times* urging the impeachment of President Nixon, for violation of civil liberties. (Exhibit DD).
- (e) In September, 1974, the ACLU published a similar advertisement in *The New York Times* sharply criticizing President Ford's pardon of Richard Nixon, characterizing it as a "sneak attack" on the Constitution. (Exhibit EE).
- (f) The New York affiliate of the ACLU periodically publishes a newsletter in which it



discusses the actions of federal and state legislative leaders on key civil liberties issues, lists the voting records of all legislators on those issues and contains a separate "Honor Roll" of those legislators who scored highest. (Exhibits FF and GG).

- (g) The ACLU Washington legislative office periodically publishes a newsletter, *Civil Liberties Alert*, containing a "box score" of the civil rights and civil liberties voting records of all members of Congress, indicating whether they voted "in favor of" or "contrary to" the ACLU position on specific proposed legislation involving selected issues. (Exhibit HH).

- (h) All such activities cost in excess of \$100.

26. The ACLU has gone to court on three occasions to resist the possibility of such disclosure of the names of its members and contributors which might be required by campaign reform legislation. *ACLU v. Jennings*, *Buckley v. Valeo*, *NYCLU v. Acito*.

27. The ACLU, which has repeatedly litigated to insure that campaign finance controls will not reach non-partisan, issue-oriented groups, now considers itself at risk of enforcement by virtue of the FEC position on this case. (Glasser Testimony, Trial Transcript at p. 422).

## B. NYCLU

1. "The New York Civil Liberties Union (NYCLU), an affiliate of the American Civil Liberties Union, is a non-partisan organization, dedicated to defending the rights guaranteed to persons under the Constitution of the United States and having as a prin-

cipal function the dissemination of information concerning such rights within the State of New York." *Buckley v. Valeo* (Court Finding 2).

2. "As the New York State affiliate of the ACLU, the NYCLU is barred by the ACLU Constitution and policies from endorsing or opposing any candidate for public office. NYCLU is, however, allowed to criticize public officials whose conduct violates civil liberties and to publicize the civil liberties record of any government official." *Buckley v. Valeo* (Court Finding 3).

3. "No advertisement, petition, or public statement of the NYCLU has ever advocated the election or defeat of a political candidate." *Buckley v. Valeo* (Court Finding 4).

4. "Although NYCLU does not endorse or oppose the election of candidates, its advertisements, statements of views on public issues, and other similar activities frequently and necessarily refer to, praise, criticize, set forth, describe or rate the conduct or actions of clearly identified public officials who may also happen to be candidates for federal office. The fact that a public official identified in NYCLU public information activities is also at the time a candidate for public office is not directly related to the intent or purpose of the advertisement." *Id.* (Court Finding 4).

5. "NYCLU regularly publicizes in its membership newsletter and through pamphlets and other publications, the civil liberties voting records, positions and actions of elected public officials, some of whom are candidates for federal office." *Id.* (Court Finding 5).

6. "NYCLU's experience has been that membership in association or identification with and support

for NYCLU is controversial." *Buckley v. Valeo* (Court Finding 13).

7. "NYCLU members and contributors request explicit assurances that their membership will remain confidential and their contribution anonymous." *Id.* (Court Finding 15).

### C. U. S. Chamber of Commerce

1. In 1976, the Federal Election Commission informed the United States Chamber of Commerce that public distribution of a booklet entitled "How They Voted" to nonmembers of the Chamber would violate 2 U.S.C. Section 441b. (Ex.LL, attached to Ct. Ex.1, FEC Opinion Request No.O/R 790).

2. The booklet "rated" the votes of all members of Congress, whether or not they were candidates for re-election. The ratings listed the votes as either "right" or "wrong" on a number of major policy issues, in accordance with the Chamber's position on such issues. (*Id.*)

3. The booklet made no reference to any campaigns or federal elections, and did not advocate the election or defeat of any candidate. (*Id.*)

4. In 1978, the Chamber of Commerce asked the Federal Election Commission whether it could distribute to members of Congress the identical 1978 version of "How They Voted." The FEC, in an Advisory Opinion (AO-1978-18), ruled that although the distribution to members of Congress would not violate the Act, "... distribution of the publication, by or on behalf of the Chamber, to other persons who are nonmembers of Chamber or its State or local affiliates would be unlawful under 2 U.S.C. § 441b

..." (Ex.KK annexed to Ct.Ex.1, Advisory Opinion, AO 1978-18).

5. Joan D. Aikens, Vice-Chairman of the Federal Election Commission, filed a dissenting opinion in that matter in which she stated:

The Commission is doing that which Congress would not dare do itself. By approving this Advisory Opinion, this Commission is successfully insulating elected representatives from the sometimes uncomfortable experience of having their positions on issues, as manifested by their votes in Congress, compared to the positions of various public organizations. The Commission has done this by construing § 441b in such a sweeping manner that the section may now encompass virtually any communication by a union or corporation (including corporations without capital stock) which can be interpreted as criticism of a Congressman's vote. If Congress had expressly articulated such an intended result, there, I think, would have been a significant and justified public outcry. The total absence within the legislative history of § 441b (and its predecessor 18 U.S.C. § 610) of any Congressional desire to regulate this type of speech seems to indicate a healthy respect for the political dangers of advocating such legislation as well as an appreciation of the enormous constitutional questions it would raise. (*Id.*)

6. Commissioner Aikens' opinion further stated that under the FEC's interpretation of § 441b, "... it would be a violation of the Act for the ACLU to finance a communication directed at the general public which states its views on any votes by elected fed-



eral officers on legislation involving questions of civil liberties. But see *ACLU [v. Jennings] supra.*" (*Id.*)

#### D. *United Church of Christ*

1. The United Church of Christ is a major Protestant fellowship which was formed in 1957 through the union of the Evangelical and Reformed Church and the Congregational Christian Churches. It is presently composed of some six thousand local congregations, having a membership of approximately two million persons. Ex.11 & JJ attached to Ct. Ex. 1; TR 332, 369).

2. The mission of the Church includes a recognized responsibility "at home and abroad for mission, aid and service, ecumenical relations, interchurch relations and Christian unity, education, publication, the ministry, ministerial pensions and relief, evangelism, stewardship, social action, health and welfare, and any other appropriate area of need or concern" (Church Constitution—Article VIII). In all these efforts and others there is a recognition that the creation of a just society also requires witness and advocacy to the sources of political power which shape the public policy of the United States and the world. (TR 334).

3. Thus, a system of monitoring and communicating to members and to the general public, administrative, legislative and judicial developments that affect the Church's mission is an essential component of the Church's ministry. It is also an important vehicle for the exchange of ideas about social and governmental issues. (TR 336).

4. The Office for Church in Society ("OCIS") is the cornerstone of this system. It monitors and reports on governmental affairs, with a particular focus

on the manner and degree to which official and quasi-official governmental activities assist or retard the cause of peace, the eradication of hunger, the relief of the poor, and the general social welfare of the nation. (TR 333, 336).

5. The mandate of OCIS is stated in paragraph 221 of the Church By-Laws:

"The Office for Church in Society shall study the content of the Gospel in its bearing on people in society, *provide and publish information and literature on social issues*, cooperate with Instrumentalities of the United Church of Christ with other appropriate bodies in making the implications of the Gospel effective in society, assist the Executive Council in its coordination function as it pertains to social education and action, *and formulate and promote a program of social education and action for the United Church of Christ.*" (emphasis added).

(CLITRIM Ex.C; TR 335).

6. OCIS engages in three primary activities: First, it takes policy positions that have been adopted by the Church's general synod and advocates these positions before a variety of agencies and institutions including congressional committees and administrative agencies. Second, OCIS engages in a program of "constituency action" which is intended "to generate interest [in] social change issues at the local level." Finally, OCIS attempts to coordinate social action within the entire United Church of Christ denomination. (Lynn Testimony, Trial Transcript at p. 333).

7. In order to further the objectives that are described in the preceding paragraph, OCIS publishes

position papers, "fact-sheets" and a variety of other documents. These papers and documents are distributed to church members, to legislators and to other interested persons. Members of the staff of OCIS also appear on radio and television programs in order to discuss issues of interest to the church. And the OCIS also publishes and distributes a monthly newsletter, now entitled "UCC Network" and formerly entitled "Washington Report," which "serves to give its readers information about what is happening, principally in Washington, on critical legislative issues" for example "world hunger or the draft of international affairs." (Lynn Testimony, Trial Transcript at p. 336).

8. The annual congressional voting chart, as it has appeared in "Washington Report," is generally prepared at the end of the legislative session which, in a non-election year, would generally mean that the voting chart would be published in December or January. The reason that the voting chart is published at this point in time is that, usually, "one has to wait until well into the year, sometimes well into the session, to get substantive votes on the most important issues that the church has been addressing." (Lynn Testimony, Trial Transcript at pp. 343-344).

9. The voting chart that appears in the January 1978 issue of Washington Report is typical of the voting charts that have been sent out by OCIS over the years. (Lynn Testimony, Trial Transcript at p. 338).

10. Washington Report and UCC Network, including the annual issue containing the congressional voting chart, are distributed not only to members of the church, but to other interested persons as well. (Lynn Testimony, Trial Transcript at p. 340).

11. The voting chart within the "Washington Report," now "UCC Network," has typically been used by members of the church who receive the publication "as a principal source of information on some very important issues." Some church members use the publication "in Sunday School classes . . . where they are discussing social issues." Others use the publication as a way to decide what issues to discuss in letters to legislators, or in conversations with legislators. The publication is also used "by . . . local people as a kind of test [of] whether they, and the OCIS in partnership, have been successful in promoting the advocacy efforts of the denomination." (Lynn Testimony, Trial Transcript at pp. 343, 345, 346).

12. The cost of publishing the annual congressional voting chart exceeds a thousand dollars—if one includes in the cost the staff time that is devoted to research and gathering information, writing and editing the publication as well as the costs of printing and distributing. (Lynn Testimony, Trial Transcript at p. 347)

13. The Office for Church in Society has never registered with the Federal Election Commission as a political committee. (Lynn Testimony, Trial Transcript at p. 347).

14. The newsletter and the voting record that appears in it do not refer to any federal election, and do not mention any members' candidacy for elective office. (Ex.II attached to Ct.Ex.1; TR 337, 338, 354, 359).

15. The OCIS and the Church have never endorsed, contributed to, or advocated the election or defeat of any candidate for public office. (TR 337, 338, 354, 359).



16. In future publications of UCC Network, it is the desire and intent of OCIS to follow the same general format with respect to the publication of congressional voting records as is set forth in the January, 1978 issue of "Washington Report." (Ex. II attached to Ct.Ex.1; TR 350, 352, 356).

17. If forced to stop publishing the congressional voting chart, a vital and important vehicle for adhering to the mandate of the Church would be lost. As described by Reverend Barry Lynn, and official with OCIS; "This [voting chart] has proven to be, in the past, a very important piece of information for use at all levels of the church. . . . this [publication] is a document that is part of the ministry of the United Church of Christ . . . Now, if we cannot publish it, then we violate not only the sense of what the Constitution and By-Laws of the United Church of Christ provide, but I think we violate the mandate of the Gospel itself, which involves us and calls us to be serious interpreters of social issues and calls us to be involved with the government in a serious way." (Lynn Testimony, Trial Transcript at pp. 350-351).

18. The discontinuance of a publication such as the OCIS congressional voting chart would also have a serious impact upon public discourse of social and political issues. As Reverend Lynn observed: "Some [legislative] decisions are very complicated. Motions are hidden in huge appropriations bills. The most important thing in a bill might be an amendment to the bill that never gets reported at all in the newspapers. If [our members] are going to be informed people making informed issue-decisions, then I think they need publications like this; and many of our members are not members of the National Taxpayers Union, or the ACLU, or Common Cause or anybody

else. This is the way that they get information on public policy issues, and this is the way they get information on the votes taken by members of the Congress, so that they can have healthy dialogue at any time of the year that they have a chance to talk to their elected officials." (Lynn Testimony, Trial Transcript at pp. 352-353).

19. The United Church of Christ and the Office of Church in Society are "not in the business of partisan advocacy" they simply publish the congressional voting chart "as a way to get a more informed discussion of the issues themselves. And that [is their] principal goal." (Lynn Testimony, Trial Transcript at p. 361).

#### E. *Public Citizen*

1. Public Citizen is a non-profit corporation which was established by Ralph Nader in 1971 to promote and publicize issues of importance and interest to consumers. Public Citizen does not have a political action committee, does not endorse particular candidates, and does not advocate the election or defeat of any candidate. Rather, its activities, which include litigation, lobbying, and various educational projects, are limited to the advocacy of its views on specific consumer issues.

2. Congress Watch is the lobbying arm of Public Citizen. Each year, Congress Watch prepares a Voting Index covering all members of Congress. The Index lists a certain number of votes in each House on issues of important to Public Citizen, compares each member's votes with Public Citizen's position, and summarizes this comparison by calculating the percentage of votes that each member cast in favor of Public Citizen's position. (TR 371, 373).

3. Public Citizen's Voting Index is distributed to members of Congress and the general public, and it is accompanied by press releases in order to draw public and media attention to the issues contained in the Index. (CLITRIM Ex.BB; TR 374).

4. Public Citizen also distributes and publicizes its Voting Indexes in selected congressional districts for the same purpose. (TR 374).

5. Consistent with Public Citizen's policies, no Voting Index or press release contains any statement advocating the election or defeat of any candidate. The Indexes are published because analysis of Congressional voting performance is inseparable from Congress Watch's efforts to promote its legislative program. (TR 374-5).

6. The 1978 Public Citizen Congressional Voting Index is typical of the voting indices prepared by Public Citizen. (Karpinski Testimony, Trial Transcript at p. 374).

7. Public Citizen's purpose in distributing a voting index, is to "educate consumers around the country about consumer issues, and specifically about the performance of their representatives and senators on those issues." A second function of the Public Citizen Congressional Voting Index is to announce to the public and to members of Congress the issues that Public Citizen considers "most important in a given session." (Karpinski Testimony, Trial Transcript at pp. 375-376).

8. In 1978, Congress Watch also prepared detailed "profiles" of twelve members of Congress who were in either their first or second terms. The profiles discussed the selected members, activities in detail, focusing on their performance, electoral history, voting patterns, congressional relationships, and views on issues

of concern to Public Citizen. The profiles also typically contain a chart describing how the subject of the profile has been evaluated by other interest groups, including the American Conservative Union, Chamber of Commerce, National Associated Businessman, National Taxpayers Union, National Council of Senior Citizens, American for Democratic Action, AFL-CIO Committee on Political Education, League of Conservation Voters, Consumer Federation of America. (TR 376-7).

9. The Congress Watch Profile that was prepared with respect to Abner Mikva, (and that was marked for identification as Defendant's Exhibit CC and has been admitted into evidence as part of Court's Exhibit 1, Ex.HH-1), is typical of the congressional profiles that are prepared by Congress Watch. (Karpinski Testimony, Trial Transcript at p. 378).

10. The members of Congress profiled span the political spectrum; Democrats and Republicans were included, as were those with high Public Citizens ratings, moderate ratings and low ratings. (Ex.HH-1 attached to Ct.Ex.1, TR 337).

11. Some of the members who were the subjects of profiles faced close electoral races, while others had little or no electoral competition. No profile advocated the election or rejection of any candidate. Rather, they evaluated certain members from Public Citizen's perspective and with respect to issues that were of concern to Public Citizen in order to inform the citizens of these twelve districts how their representatives were performing. (TR 376, 388).

12. The annual Public Citizen Voting Index costs well over one thousand dollars to prepare, publish and distribute each year. (Karpinski Testimony, Trial Transcript at p. 379).



13. In addition to preparing and distributing the voting indices and the profiles, Congress Watch also lobbies before Congress on behalf of consumer issues, and testifies before congressional committees with respect to consumer issues. It also publishes other material about issues and about the activities of Congress and its members. (Karpinski Testimony, Trial Transcript at p. 380).

14. Congress Watch engages in the full range of its activities throughout the entire year. (Karpinski Testimony, Trial Transcript at p. 380).

15. The publication of Public Citizen's Congressional Voting Index cannot precede the conclusion of the legislative session "because [many] important votes occur in the last two or three weeks of a Congress." Nevertheless, Public Citizen attempts to publish its voting record as soon as possible, after the Congressional session ends. Thus, in 1978, Congress concluded its session during the second week of October and the Public Citizen Voting Index was published before the end of that month. (Karpinski Testimony, Trial Transcript at p. 383).

16. Voting indices and Congressional policies are typically distributed by Congress Watch and Public Citizen even after the November elections. Indeed, the voting index is available for general sale to the public and more copies of the index are sold or distributed after Election Day than before it. (Karpinski Testimony, Trial Transcript, pp. 383-384).

17. If Public Citizen and Congress Watch were required to register as political committees in order to publish their voting index and profiles, they would not register and would, instead, discontinue publication of the voting index and of the profiles. (Karpinski Testimony, Trial Transcript at p. 384).

18. If Congress Watch and Public Citizen were to decide not to publish the voting index and Congressional profiles in their educational and advocacy efforts would be hampered. As Mr. Gene Karpinski, an official with Congress Watch stated: "... [I]f members [of Congress] feel more insulated [from scrutiny] and are aware that their performance might not be recorded as frequently or offered at all [to] the district, ... they would not have to be responsive to what we suggested [regarding] how to vote on pro-consumer legislation." Also, "it would hamper the ability of our consumer activists around the country to learn about their members and respond to what their members do." (Karpinski Testimony, Trial Transcript at pp. 385-386).

19. Congress Watch regards publication of the voting indexes and profiles as an essential element of Citizen Watch's program of advocacy and educational efforts on behalf of consumers, because citizens need ready access to detailed information on the performance of their legislators. Citizen Watch's publications are designed to provide such information, without advocating the election or defeat of any candidate. (TR 381).

20. These factors have been brought before the Federal Election Commission in an Advisory Opinion Request (AOR 1978-62) filed in 1978 to determine whether the activities described herein come within the reach of the relevant provisions of the Federal Election Campaign Act. The matter has been pending before the Commission for approximately one year. (TR 386).

#### F. *New York Times*

1. On February 11, 1979, an article appeared in the Long Island edition of *The New York Times*,

which (1) discussed Congressman Ambro's views on ratings of voting records of members of Congress, and (2) set forth the ratings that the six Long Island Congressmen had received on "key issues" from the Americans for Democratic Action (ADA), the Americans for Constitutional Action (ACA) and the American Conservative Union (ACU). (CLITRIM Ex.D).

#### G. Conclusion

The publication and dissemination of Congressional Voting Records by the United Church of Christ by Public Citizen, by the NYCLU, by the ACLU and by the Chamber of Commerce are similar to the leafletting activity undertaken by CLITRIM, which is the subject of this action, in the following respects: All such activity represents traditional non-partisan speech where no express advocacy of particular electoral candidates is undertaken. Moreover, such expression constitutes a longstanding form of public disclosure in this country which substantially advances the exchange of ideas about social and political issues. Such expression would be significantly impeded and deterred if the Federal Election Campaign Act were held to impose regulatory restrictions upon such activity.

. . . . .

## UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

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Civil Action No. 82-0609-G

FEDERAL ELECTION COMMISSION, PLAINTIFF,

v.

MASSACHUSETTS CITIZENS FOR LIFE, INC., DEFENDANT.

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### OBJECTIONS AND ANSWERS OF FEDERAL ELECTION COMMISSION TO INTERROGATORIES PROPOUNDED BY DEFENDANT

Pursuant to Rule 33 of the Federal Rules of Civil Procedure, the Federal Election Commission (the "Commission") submits the following objections and answers to Defendant's First Set of Interrogatories:

#### *Interrogatory No. 1*

Please state the name, address and title of the individual who signs answers to these interrogatories on behalf of plaintiff.

#### *Answer To Interrogatory No. 1*

Charles N. Steele, General Counsel; Lawrence M. Noble, Assistant General Counsel; and R. Lee Andersen, Attorney, the Office of General Counsel, Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463.



*Interrogatory No. 2*

If plaintiff contends, having conducted its investigation, that the publication is not a "newspaper" as that term is used in 2 U.S.C. § 431(f)(4)(A) (as of September, 1978) or 2 U.S.C. § 431(9)(B)(i) (at present) please:

- a. state what plaintiff believes to be the definition of "newspaper" for purposes of that statute,
- b. state what source plaintiff relies upon as having provided that definition,
- c. describe in detail what features or characteristics of the said publication disqualify it from being considered a "newspaper."

*Objection To Interrogatory No. 2*

The Commission objects to Interrogatory No. 2 and its subparts on the grounds that it asks for legal conclusions and opinions.

*Answer To Interrogatory No. 2*

Without waiving its objection, the Commission answers Interrogatory No. 2 as follows: the Commission contends that the September 1978 materials that exhorted readers to vote for candidates opposing abortion are not newspapers for purposes of 2 U.S.C. § 431(f)(4)(A).

- a. The Federal Election Campaign Act of 1971, as amended, 2 U.S.C. § 431 *et seq.* (the "Act") does not contain a specific definition of the term "newspaper." The Commission determines the validity of each asserted claim that activity which would be an expenditure or contribution is exempted by virtue of 2 U.S.C.

§ 431(f)(4)(A) on a case-by-case basis. The Commission's determinations are based upon the facts available, all relevant legislative history and applicable statutory and case law.

- b. See answer to Part a. above.

*Additional Objections To Part c.*

In addition to the Commission's objection to Interrogatory No. 2 stated above, the Commission objects to part c. because it asks for resolution of an ultimate legal issue in this action. Moreover, the Commission objects to part c. because discovery is still proceeding in this action and a definitive attempt to answer this part would be premature.

*Answer To Part c.*

Without waiving its additional objections to part c., the Commission answers that defendant has failed to make even a minimal showing that the September 1978 materials that exhorted readers to vote for candidates opposing abortion were any news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication.

*Interrogatory No. 3*

If plaintiff contends, having conducted its investigation, that the publication is not an "other periodical publication" as that term is used in 2 U.S.C. § 431(f)(4)(A) (as of September, 1978) or 2 U.S.C. § 431(9)(B)(i) (at present), please:

- a. state what plaintiff believes to be the definition of "other periodical publication" for purposes of that statute,



- b. state what source plaintiff relies upon as having provided that definition,
- c. describe in detail what features or characteristics of the said publication disqualify it from being considered an "other periodical publication."

*Objection To Interrogatory No. 3*

The Commission objects to Interrogatory No. 3 and its subparts on the grounds that it asks for legal conclusions and opinions.

*Answer To Interrogatory No. 3*

Without waiving its objection, the Commission answers Interrogatory No. 3 as follows: the Commission contends that the September 1978 materials that exhorted readers to vote for candidates opposing abortion are not "other periodical publication(s)" for purposes of 2 U.S.C. § 431(f)(4)(C).

a. The Act does not contain a specific definition of the term "other periodical publication." The Commission determines the validity of each asserted claim that activity which would be an expenditure or contribution is exempted by virtue of 2 U.S.C. § 431(f)(4)(A) on a case-by-case basis. The Commission's determinations are based upon all facts available, relevant legislative history and applicable statutory and case law.

b. See answer to part a. above.

*Additional Objections To Part c.*

In addition to the Commission's objection to Interrogatory No. 3 stated above, the Commission objects to part c. because it asks for resolution of an ultimate legal issue in this action. Moreover, the Com-

mission objects to part c. because discovery is still proceeding in this action and a definitive attempt to answer this part would be premature.

*Answer To Part c.*

Without waiving its additional objections to part c., the Commission answers that defendant has failed to make even a minimal showing that the September 1978 materials that exhorted readers to vote for candidates opposing abortion were any news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication.

*Interrogatory No. 4*

Does the FEC agree that the publication constitutes a newsletter?

- a. If so, set forth in detail wherein a newsletter differs from a newspaper for purposes of the exclusion from the definition of expenditure referred to in Interrogatory No. 2.
- b. If not, describe in detail what features or characteristics of the publication preclude it from being a newsletter.

*Objection To Interrogatory No. 4*

The Commission objects to Interrogatory No. 4 and its subparts on the grounds that it asks for legal conclusions and opinions.

*Answer To Interrogatory No. 4*

Without waiving its objection, the Commission answers Interrogatory No. 4 as follows: the Commission contends that the September 1978 materials that

exhorted readers to vote for candidates opposing abortion are not newsletters for purposes of 2 U.S.C. § 431(f)(4)(C).

a. Not applicable.

*Additional Objections To Part b.*

In addition to the Commission's objection to Interrogatory No. 4 stated above, the Commission objects to part b. because it asks for resolution of an ultimate legal issue in this action. Moreover, the Commission objects to part b. because discovery is still proceeding in this action and a definitive attempt to answer this part would be premature.

*Answer To Part b.*

Without waiving its additional objections to part b., the Commission answers that defendant has failed to make even a minimal showing that the September 1978 materials that exhorted readers to vote for candidates opposing abortion were any news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication.

*Interrogatory No. 5*

Please set forth each and every reason why the publication is not excluded from the definition of "expenditure" by 2 U.S.C. § 431(f)(4)(a) (as of September, 1978) or 2 U.S.C. § 431(9)(B)(i) (at present).

*Objection To Interrogatory No. 5*

See answers to Interrogatories No. 2, 3 and 4 above.

*Answer To Interrogatory No. 5*

Without waiving its objection, the Commission answers that defendant has failed to make even a minimal showing that the September 1978 materials that exhorted readers to vote for candidates opposing abortion were any news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication.

*Interrogatory No. 6*

Has the FEC found reason to believe, or reasonable cause to believe, or probable cause to believe that any other nonprofit corporation has made an impermissible expenditure in connection with an election by reason of material printed in that organization's newsletter, newspaper, tabloid, periodical or similar publication?

*Objection To Interrogatory No. 6*

The Commission objects to Interrogatory No. 6 on the grounds that the term "similar publication" is vague and ambiguous.

*Interrogatory No. 7*

If your answer to the previous interrogatory is not in the negative, please:

- a. identify the nonprofit corporation by name and state of incorporation,
- b. identify the FEC's docket or file number in the case,
- c. give the date of the said finding by the FEC,



- d. give the date of each publication giving rise to the finding.

*Answer To Interrogatory No. 7*

See answer to Interrogatory No. 6.

*Interrogatory No. 8*

Has the FEC brought any court action against any nonprofit corporation alleging that the corporation has made an impermissible expenditure in connection with an election by reason of material printed in that organization's newsletter, newspaper, tabloid, periodical or similar publication?

*Objection To Interrogatory No. 8*

The Commission objects to Interrogatory No. 8 on the grounds that the term "similar publication" is vague and ambiguous.

*Interrogatory No. 9*

If your answer to the previous interrogatory is not in the negative, please:

- a. identify the nonprofit organization, by name and state of incorporation,
- b. state the title or caption of the case,
- c. identify the court in which the action was brought, giving the docket number,
- d. state whether or not there has been any determination by the court on the merits of the FEC's contention, and, if so, what date the court determination was entered.

*Answer To Interrogatory No. 9*

See answer to Interrogatory No. 4.

*Interrogatory No. 10*

The FEC has alleged in paragraph 10 of the Complaint that the publication was mailed to 50,000 people who were not members of MCFL. Please:

- a. define what you mean by "members" as that term is used in 2 U.S.C. § 431(f)(4)(C) (as of September, 1978) or 2 U.S.C. § 431(9)(B) (iii) (at present),
- b. state each and every reason why the said people to whom the publication was allegedly mailed did not qualify as "members."

*Objection To Interrogatory No. 10*

The Commission objects to Interrogatory No. 10 on the grounds that it asks for legal conclusions and opinions.

*Answer To Interrogatory No. 10*

Without waiving its objection, the Commission answers that the term "members" is defined in Commission Regulation 11 C.F.R. § 114.1(e), numerous Advisory Opinions including 1976-79, 1977-67, 1979-69 and 1980-75, as well as relevant legislative history and court cases.

*Additional Objections to Part b.*

In addition to the Commission's objection to Interrogatory No. 10 state above, the Commission objects to part b. because it asks for resolution of an ultimate legal issue in this action. Moreover, the Com-



mission objects to part b. because discovery is still proceeding in this action and a definitive attempt to answer this part would be premature.

*Answer to Part b.*

Without waiving its additional objections to part b., the Commission answers that 50,000 persons receiving the September 1978 materials that exhorted readers to vote for candidates opposing abortion, identified in defendant's response to the Commission's first set of interrogatories as "Non-contributing Members", did not qualify as members for at least the following reasons: defendant's formal documents precluded members; "Non-contributing Members" had no rights or obligations *vis-a-vis* defendant corporation; "Non-contributing Members" did not satisfy the requirements for membership in defendant corporation and did not knowingly take affirmative steps to become members of defendant corporation.

*Interrogatory No. 11*

The FEC has alleged in paragraph 9 of the Complaint that the publication "exhorted the reader to vote" for candidates opposed to abortion. Does the FEC contend that:

- a. the publication constituted a violation of law because it constituted express advocacy for federal candidates, or
- b. the publication constituted a violation of law regardless of whether or not the publication is adjudged to be express advocacy for federal candidates?

*Objection To Interrogatory No. 11*

The Commission objects to Interrogatory No. 11 on the grounds that it asks for legal conclusions and opinions.

*Answer To Interrogatory No. 11*

Without waiving its objection, the Commission answers Interrogatory No. 11 as follows:

- a. No.
- b. Yes.

*Interrogatory No. 12*

Please identify the complainant referred to in paragraph 16 of the Complaint.

*Answer To Interrogatory No. 12*

The complainant is the National Abortion Rights Action League, Inc.

*Interrogatory No. 13*

With respect to each oral or telephonic communication between the said complainant or anyone on behalf of NARAL and anyone on behalf of the FEC from April 1, 1979, to date, referring in any way to the subject matter of this case or the allegations made by the complainant, please:

- a. state the date and place,
- b. identify the speakers,
- c. set forth as nearly verbatim as you can what was said.

*Answer To Interrogatory No. 13*

No such communications have taken place.

*Interrogatory No. 14*

If plaintiff contends that 2 U.S.C. § 441b prohibits nonprofit corporations from making expenditures in connection with a federal election and that such prohibition serves a compelling purpose, please

- a. specify in detail what that purpose is and
- b. identify in detail every item of legislative history which plaintiff contends reveals this purpose.

*Objection To Interrogatory No. 14*

The Commission objects to Interrogatory No. 14 on the grounds that it asks for legal conclusions and opinions.

*Answer To Interrogatory No. 14*

Without waiving its objections to Interrogatory No. 14, the Commission answers as follows:

- a. The compelling purpose served by the prohibitions in 2 U.S.C. § 441b is disclosed in the legislative history pertinent to that section as well as the relevant case law, including: *United States v. CIO*, 335 U.S. 106 (1948); *United States v. Pipefitters Local No. 562*, 407 U.S. 385 (1972); and *United States v. UAW*, 352 U.S. 567 (1957).

Respectfully submitted,

/s/ Charles N. Steele  
CHARLES N. STEELE  
General Counsel

/s/ Lawrence M. Noble  
LAWRENCE M. NOBLE  
Assistant General Counsel

/s/ R. Lee Andersen  
R. LEE ANDERSEN  
Attorney

May 25, 1982

Federal Election Commission  
1325 K Street, N.W.  
Washington, D.C. 20463  
(202) 523-5071

UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF MASSACHUSETTS

Civil Action No. 82-0609-G

FEDERAL ELECTION COMMISSION, PLAINTIFF,

v.

MASSACHUSETTS CITIZENS FOR LIFE, INC., DEFENDANT.

PLAINTIFF FEDERAL ELECTION COMMISSION'S  
RESPONSE TO DEFENDANT'S REQUEST  
FOR ADMISSIONS

Pursuant to Rule 36 of the Federal Rules of Civil Procedure the Federal Election Commission (hereinafter the "Commission") submits the following response:

1. Admit.
2. Admit.
3. Admit.
4. The Commission objects to the use of the term "trial" in request No. 4. The proceeding is more properly characterized as an evidentiary hearing. Subject to this objection, the Commission admits request No. 4.
5. The Commission objects to Request No. 5 because it calls for admissions as to the truth of findings of fact made by Judge Pratt in the certification of findings of fact to the Second Circuit Court of Appeals in *Federal Election Commission v. Central Long Island Tax Reform Immediately Committee, et al.*, Docket No. 78-C-1658 (E.D.N.Y. 1979). These findings reflect, in most instances, only the court's judg-

ment as to the veracity of a variety of opinions concerning the organizational purposes and operations of the American Civil Liberties Union, the New York Civil Liberties Union, the U.S. Chamber of Commerce, the United Church of Christ, Public Citizen and the New York Times. With the exception of those findings admitted below, the Commission is not in a position to have actual knowledge as to whether the court's findings are in fact true regarding the named organizations. The Commission does admit that those findings incorporated into request No. 5 are findings of fact made by Judge Pratt in that action. The Commission has made reasonable inquiry and the information known or readily obtainable by it is insufficient to enable the Commission to admit or deny the truth of the findings submitted by the defendant except as to the following:

VII

C.

1. Admit.
2. Admit.
3. Admit.
4. Admit.
5. Admit.
6. Admit.

D.

13. Admit.
14. Admit.

E.

20. Admit.



F.

1. Admit.
6. See Commission's response to Request No. 5.
7. With the exception of finding VII. E. 20., the Commission's response to Request No. 7 is identical to that for Request No. 5.

VII.

E.

20. Deny.

Respectfully submitted,

/s/ Charles N. Steele  
CHARLES N. STEELE  
General Counsel

/s/ Lawrence M. Noble  
LAWRENCE M. NOBLE  
Assistant General Counsel

/s/ R. Lee Andersen  
R. LEE ANDERSEN  
Attorney

June 23, 1982

Federal Election Commission  
1325 K Street, N.W.  
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(202) 523-5071

UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF MASSACHUSETTS

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Civil Action No. 82-0609-G

FEDERAL ELECTION COMMISSION, PLAINTIFF,

v.

MASSACHUSETTS CITIZENS FOR LIFE, INC., DEFENDANT.

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SUPPLEMENTARY OBJECTIONS AND ANSWERS OF  
THE FEDERAL ELECTION COMMISSION TO  
INTERROGATORIES PROPOUNDED BY DEFENDANT

Pursuant to Rule 33 of the Federal Rules of Civil Procedure and Rule 15(e) of the Federal Local Court Rules for the District of Massachusetts, the Federal Election Commission (hereinafter the "Commission") submits the following Supplementary Objections and Answers to Defendant's First Set of Interrogatories. As the Commission has stated previously, parts a and b of defendant's Interrogatories Nos. 2 and 3, and part a of Interrogatory No. 4 as originally drafted ask the Commission for purely legal conclusions as to the meaning of the individual terms "newspaper" and "other periodical publication that appear within the exemption of Section 431(9)(B)(i) of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. § 431 *et seq.* (hereinafter cited as the "Act"), and the Commission continues to assert its objection to these interrogatories. However, as a result of telephone conversations held with counsel for defendant

during which defendant modified and clarified its interrogatories, it now appears that Interrogatories 2 and 3 and Interrogatory No. 4, taken in their entirety, may have been the defendants' attempt to inquire into how the law was applied to specific facts at issue in this action. The Commission, therefore, is making a supplementary response to Interrogatory No. 5 covering the application of the exemption in Section 431(9)(B)(i) of the Act to the present action.

In addition, without waiving its objections, the Commission will provide some illustrative legal background to the terms at issue in Interrogatories 2, 3, 4 and 5. The Commission continues to maintain that it should not be required to conduct defendant's legal research, but has offered this background information in the spirit of compromise embodied in Federal Local Court Rule 15(e) and to aid defendant in conducting its own legal research. Finally, the Commission has submitted a supplementary response to Interrogatories No. 6 through 9 in light of the defendant's agreement to strike the term "other publication" from these interrogatories. (See letter attached as Exhibit A).

#### *Interrogatory No. 2*

If plaintiff contends, having conducted its investigation, that the publication is not a "newspaper" as that term is used in 2 U.S.C. § 431(f)(4)(A) (as of September, 1978) or 2 U.S.C. § 431(9)(B)(i) (at present) please:

- a. state what plaintiff believes to be the definition of "newspaper" for purposes of that statute,
- b. state what source plaintiff relies upon as having provided that definition,

- c. describe in detail what features or characteristics of the said publication disqualify it from being considered a "newspaper."

#### *Supplementary Answer To Interrogatory No. 2*

See supplementary answer to Interrogatory No. 5.

#### *Interrogatory No. 3*

If plaintiff contends, having conducted its investigation, that the publication is not an "other periodical publication" as that term is used in 2 U.S.C. § 431(f)(4)(A) (as of September, 1978) or 2 U.S.C. § 431(9)(B)(i) (at present), please:

- a. state what plaintiff believes to be the definition of "other periodical publication" for purposes of that statute,
- b. state what source plaintiff relies upon as having provided that definition,
- c. describe in detail what features or characteristics of the said publication disqualify it from being considered an "other periodical publication."

#### *Supplementary Answer To Interrogatory No. 3*

See supplementary answer to Interrogatory No. 5.

#### *Interrogatory No. 4*

Does the FEC agree that the publication constitutes a newsletter?

- a. If so, set forth in detail wherein a newsletter differs from a newspaper for purposes of the exclusion from the definition of expenditure referred to in Interrogatory No. 2.

- b. If not, describe in detail what features or characteristics of the publication preclude it from being a newsletter.

*Supplementary Answer to Interrogatory No. 4*

See supplementary answer to Interrogatory No. 5.

*Interrogatory No. 5*

Please set forth each and every reason why the publication is not excluded from the definition of "expenditure" by 2 U.S.C. § 431(f)(4)(a) (as of September, 1978) or 2 U.S.C. § 431(9)(B)(i) (at present).

*Supplementary Objection To Interrogatory No. 5*

Insofar as the defendant is asking the Commission's view on the abstract application of law, the Commission is generally limited by statute from making advisory rulings or policy statements outside the process of promulgating regulations or rendering advisory opinions.<sup>1</sup> With regard to the application of the law to the specific facts of this case, the Office of General Counsel's Probable Cause Brief of August 26, 1980, reviews the features of characteristics of the defendant's September 1978 materials which disqualify it from the exemption found in Section 431(9)(B)(i). Of course, all of the supplementary answers are qualified by the fact that discovery is ongoing in this matter.

<sup>1</sup> "No opinion of an advisory nature may be issued by the Commission or any of its employees except in accordance with the provisions of [Section 437f concerning advisory opinions]." 2 U.S.C. § 437f(b).

*Supplementary Answer To Interrogatory No. 5*

Without waiving its objections and assuming for purposes of this answer that Interrogatories 2, 3 and 4 are subsumed under Interrogatory No. 5, the Commission submits the following answer:

(1) *General Counsel's Brief*

The General Counsel's Brief of August 26, 1980, (which was submitted to defendant shortly after that date) states that even assuming that the organization's regular newsletter could be considered to fall within the exemption in Section 431(9)(B)(i), the September 1978 materials that exhorted readers to vote for candidates opposing abortion could not. The General Counsel's Brief notes that the circulation of the materials in question was many times that of the regular newsletter and that the materials appeared to be a vehicle expressly designed to have partisan impact upon the 1978 primary election. Another factor mentioned in the brief was that the materials were circulated far in excess of the two to three thousand persons who typically received the MCFL newsletter. It is also apparent that the materials were not a periodical.

(2) *Regulations and Advisory Opinions*

Although neither the Act nor the Commission regulations define the specific terms "newspaper", "magazine" or "other periodical publication," in the context of the exemption from the definition of expenditure in Section 431(9)(B)(i), as it applies to a prohibited contribution made by a corporation, Commission regulations and advisory opinions have touched upon the Section 431(9)(B)(i) exemption, generally, in the following instances:



a. Commission regulation 11 C.F.R. § 114.4(e) describing the kind of media corporations which may defray the costs of non-partisan candidate debates without making a prohibited contribution, states:

"(e) Nonpartisan candidate debates. (1) A non-profit organization qualified under 11 C.F.R. 110.13(a)(1) may use its own funds and may accept funds donated by corporations or labor organizations under 11 C.F.R. 114.4(e)(3) to defray costs incurred in staging non-partisan candidate debates in accordance with 11 C.F.R. § 110.13.

(2) A bona fide broadcaster, newspaper, magazine and other periodical publication may use its own funds to defray costs incurred in staging nonpartisan public candidate debates held in accordance with 11 C.F.R. § 110.13.

(3) A corporation or labor organization may donate funds to nonprofit organizations qualified under 11 C.F.R. § 110.13(a)(1) to stage non-partisan candidate debates held in accordance with 11 C.F.R. § 110.13 and 114.4(e)."

b. Commission regulation 11 C.F.R. § 100.7(b)(2) states:

"Any cost incurred in covering or carrying a news story, commentary, or editorial by any broadcasting station, newspaper, magazine, or other periodical publication is not a contribution unless the facility is owned or controlled by any political party, political committee, or candidate, in which case the cost for a news story (i) which represents a bona fide news account communicated in a publication of general circulation or

on a licensed broadcasting facility, and (ii) which is part of a general pattern of campaign-related news accounts which give reasonably equal coverage to all opposing candidates in the circulation or listening area, is not a contribution."

c. Advisory Opinion 1980-109, citing the legislative history of the "news story" exemption at 2 U.S.C. § 431(9)(B)(i) of the Act in H.R. Rep. No. 93-1239, 93d Cong., 2d Sess. 4 (1974), states that it is a limited exemption designed to insure the right of the media to cover and comment on election campaigns. Also in AO-1980-109, there is a reference to the meaning of the term "other periodical publication" in the exemption of Section 431(9)(B)(i) which appeared in the Explanation and Justification of the Commission's Candidate Debate Regulations at 44 *Federal Register* 76735 (December 27, 1979). Referring to Commission regulation 114.4(e), the Explanation and Justification states, in relevant part: "a publication in bound pamphlet form appearing at regular intervals (usually either weekly, bi-weekly, monthly or quarterly) and containing articles of news, information, opinion or entertainment, whether of general or specialized interest which ordinarily derive their revenues from subscriptions and advertising."

### (3) Other Relevant Definitions

In addition to references specific to the Act, the terms "magazine" and "periodical" have been interpreted by the courts in the context of postal service regulations, as well as bankruptcy and communications law. These interpretations have required periodicity, content aimed at the general public, dis-

cusion of a variety of issues, and some continuity or connection between successive issues. *Houghton v. Payne*, 194 U.S. 88, 96-97 (1904); *Smith v. Hitchcock*, 226 U.S.C. 53, 59 (1912); *Institute for Scientific Information, Inc. v. United States Postal Service*, 555 F.2d 128, 131 (3d Cir. 1977); *H.W. Wilson Co. v. United States Postal Service*, 580 F.2d 33, 37 (2d Cir. 1978).

In the absence of a precise statutory definition one court stated that "it is pretty generally agreed that it ("newspaper") means a medium for the dissemination of news of passing events printed and distributed at short but regular intervals." *In Re Sterling Cleaners and Dryers*, 81 F.2d 596, 597 (7th Cir. 1936). Other courts have resorted to the dictionary stating, for example, "[i]n Webster's New International Dictionary (p. 1455) a 'newspaper' is defined as a paper printed and distributed at stated intervals, usually daily or weekly, to convey news, advocate opinions, etc., now usually containing also advertisements and other matters of public interest . . ." *Cory v. Physical Culture Hotel*, 14 F. Supp. 977, 984 (1936), aff'd 88 F.2d 411 (2d Cir. 1937).

"Newspaper" has similarly been defined for purposes of federal statutes other than the Act. "Newspapers", within general accepted meanings, are publications printed on newsprint, which are published no less than weekly, a substantial portion of which are devoted to the dissemination of news and editorial opinion, and which are distributed to the general public. See Newspaper Preservation Act of July 24, 1970 (codified in 15 U.S.C. § 1802 (1979)).

#### *Interrogatory No. 6*

Has the FEC found reason to believe, or reasonable cause to believe, or probable cause to believe that any

other nonprofit corporation has made an impermissible expenditure in connection with an election by reason of material printed in that organization's newsletter, newspaper, tabloid or periodical?

#### *Supplementary Response To Interrogatory No. 6*

Without waiving its objections, the Commission submits the following answer: Yes.

#### *Interrogatory No. 7*

If your answer to the previous interrogatory is not in the negative, please:

- a. identify the nonprofit corporation by name and state of incorporation,
- b. identify the FEC's docket or file number in the case,
- c. give the date of the said finding by the FEC,
- d. give the date of each publication giving rise to the finding.

#### *Supplementary Response To Interrogatory No. 7*

Without waiving its objections, the Commission answers that it will provide defendant with list of matters under review ("MUR's") and the name of the nonprofit corporation in the matter. When the Commission responds to defendant's Request for Production of Documents, No. 5, it will provide all the information called for in Interrogatory No. 7 as well. The Commission notes that the information provided below is sufficient to permit defendant to examine the pertinent files on public record at the Commission's offices in Washington, D.C. The Commission further notes that the following list of MUR's is comprised



only of those files which have been closed as the Commission is precluded by statute from making public any open investigation of alleged violations of the Act without the written consent of the person being investigated. 2 U.S.C. § 437g(a)(12). We are continuing to search our files to determine whether any other MUR's fit into the parameters of Interrogatory No. 7 and will further supplement our response to this interrogatory with any MUR's conforming to these parameters.

1. MUR 959—The Right to Life Committee of New Mexico, Inc.
2. MUR 1183—The Family Life League, Inc.
3. MUR 1377—Planned Parenthood Affiliates of California, Inc.

#### *Interrogatory No. 8*

Has the FEC brought any court action against any nonprofit corporation alleging that the corporation has made an impermissible expenditure in connection with an election by reason of material printed in that organization's newsletter, newspaper, tabloid or periodical?

#### *Supplementary Response To Interrogatory No. 8*

Without waiving its objections, the Commission submits the following answer: Yes.

#### *Interrogatory No. 9*

If your answer to the previous interrogatory is not in the negative, please:

- a. identify the nonprofit organization, by name and state of incorporation,

- b. state the title or caption of the case,
- c. identify the court in which the action was brought, giving the docket number,
- d. state whether or not there has been any determination by the court on the merits of the FEC's contention, and, if so, what date the court determination was entered.

#### *Supplementary Response To Interrogatory No. 9*

Without waiving its objections, the Commission answers that a search of our files reveals that the Commission has brought one court action fitting the parameters of Interrogatory No. 9. In addition, we are continuing to search our files to determine whether any other court actions fit into the parameters of Interrogatory No. 9 and will supplement our response to this interrogatory with any such court actions conforming to these parameters.

- a. Liberty Lobby, Inc., District of Columbia
- b. *Federal Election Commission v. The Spotlight and Liberty Lobby, Inc.*, Civ. Action no. 78-1544 (D.D.C. filed August 17, 1978).
- c. See response to b.
- d. Consent Order approved by court June 28, 1982.

Respectfully submitted,

/s/ Charles N. Steele (LMN)  
CHARLES N. STEELE  
General Counsel



/s/ Lawrence M. Noble  
 LAWRENCE M. NOBLE  
 Assistant General Counsel

/s/ R. Lee Andersen  
 R. LEE ANDERSEN  
 Attorney

June 30, 1982

Federal Election Commission  
 1325 K Street, N.W.  
 Washington, D.C. 20463  
 (202) 523-5071

UNITED STATES DISTRICT COURT FOR THE  
 DISTRICT OF MASSACHUSETTS

Misc. Action No. 82-0609-G

FEDERAL ELECTION COMMISSION, PLAINTIFF

v.

MASSACHUSETTS CITIZENS FOR LIFE, INC., DEFENDANT

AFFIDAVIT OF PHILIP D. MORAN

I, Philip D. Moran, hereby depose and state:

1. My name is Philip D. Moran. I have been a member of Massachusetts Citizens for Life, Inc. ("MCFL") since its incorporation. I was one of the incorporators of MCFL. I am, and since 1979 have been, a member of the Executive Committee of MCFL. Also, I am, and since 1973 have been, a director of MCFL. I have personal knowledge of the matters stated herein.

*Incorporation and Statement of Purpose*

2. MCFL grew out of an Ad Hoc Committee organized in September, 1972 to fight a permissive abortion referendum in 21 Massachusetts cities and towns.

3. In January, 1973 MCFL was incorporated as a nonprofit, grass roots, nonsectarian, nonpartisan, non-stock corporation under Mass. Gen. Laws c.180. As stated in its Articles of Organization, a copy of which

is attached hereto as *Exhibit A*, MCFL's corporate purpose was

To foster respect for human life and to defend the right to life of all human beings, born and unborn, through educational, political and other forms of activities and in addition to engage in any other lawful act or activity for which corporations may be organized . . . .

MCFL also adopted a somewhat longer version of this language as its "Statement of Purpose;" that Statement reads

In recognition of the fact that each human life is a continuum from conception to natural death, the objective of this organization is to foster respect for human life and to defend the right to life of all human beings, born and unborn, through educational, political, and other forms of activity.

4. From time to time throughout this affidavit specific dates or years will be referred to. At other times, I will use the present tense. The present tense should be understood as referring to September, 1978, and earlier; use of this tense is merely for convenience or reference.

#### *Membership and Fund Raising*

5. From its incorporation, through 1978, MCFL recognized as a member any person who had signified his or her agreement with MCFL's Statement of Purpose.

6. MCFL's records kept in the ordinary course of its operations indicate that by 1978 MCFL claimed approximately 57,000 members.

7. MCFL's records kept in the ordinary course of its operations further indicate that in 1978 some 5,986 of these members were contributing or dues-paying members.

8. During the period 1973-1978, MCFL also raised funds through such activities as garage sales, cake sales, bike-a-thons, fashion shows, brunches, picnics, yard sales, dinners, dances, raffles, auctions, furniture sales, wine-testing parties, MCFL night at the Boston Pops, MCFL night at the Red Sox, flower sales, and cookbook sales.

9. All of the funds raised by MCFL during the period 1973-1978, whether from dues or through contributions or other activities, came from individuals; none came from corporations.

10. No portion of the contributions, dues, or funds raised by MCFL during the period 1973-1978 is earmarked for specific political activities or for particular candidates. They were used to cover administrative costs, the printing and distribution of educational materials and the MCFL newsletter.

#### *MCFL Activities: Educational*

11. Since its inception in 1972, MCFL has engaged in a wide range of activities designed to foster the respect for human life and to defend the right to life of all human beings, born and unborn. During the period 1973-1978, these activities focused on the following subjects, among others: abortion, euthanasia and living will legislation, pregnancy disability legislation, armed services regulations limiting the number of dependents of armed services personnel, experimentation on fetuses, the equal rights amendment, and *in vitro* fertilization.

12. Many of MCFL's activities are educational. For example, during the period 1973-1978, it partici-

pated in and provided speakers for discussion groups, forums, debates, lectures, educational booths, colleges, youth organizations, fairs, banquets, community forums, expositions, hearings, churches, synagogues; it also participated in radio and TV broadcasts, all on pro-life issues. In 1978 alone, for example, it made 149 such presentations.

13. Similarly, during the period 1973-1978, MCFL organized numerous gatherings of pro-life supporters to bear witness to their pro-life position. In 1974, it organized an ecumenical prayer service for the unborn in front of the State House attended by 2,200 persons; it hosted the first New England pro-life conference held at Framingham and attended by 350 persons from six states. Each year during this period, on or about January 22, the anniversary of the Supreme Court's decision in *Roe v. Wade*, it sponsored a March for Life which proceeded from Faneuil Hall to the State House. During this same period it also organized numerous Walks for Life and Festivals for Life.

14. In addition to providing speakers, publishing advertisements and organizing gatherings, MCFL also promoted the flow of information on pro-life issues by distributing pro-life literature. In 1978, it distributed many pieces of literature on pro-life issues. It also has distributed the MCFL Newsletter since 1973. Further, in April, 1976, it initiated a 24-hour telephone recording which provides up-to-date information on pro-life issues and MCFL activities.

#### *MCFL Activities: Legal*

15. During this same period, MCFL also sponsored a variety of legal activities. Somewhere be-

tween 1974 and 1978, it contributed funds towards the defense of the constitutionality of the clause requiring parental consent in the Massachusetts abortion statute.

#### *MCFL Activities: Political and Legislative*

16. MCFL has also engaged in a variety of political and legislative activities during 1973-1978. It drafted and submitted various legislation on pro-life issues. In 1974, for example, it drafted and submitted two bills which became law in Massachusetts: one prohibited harmful experimentation on live fetuses (H. 6019); the other was designed to protect unborn children and maternal health (H. 5933). It also sponsored testimony against a bill promoting euthanasia and filed a memorialization petition seeking a formal expression from the Massachusetts Senate to Congress with respect to federal legislation amending the Bill of Rights to establish the rights of the unborn.

17. Similarly, during the period 1973-1978, editions of the MCFL newsletter consistently urged members to register, to vote, and to write to elected representatives on the subject of upcoming votes, hearings and elections. Central to its political activities was the effort to educate its members through newsletters reporting on a candidate's voting record or his responses to questions on pro-life issues.

18. During the period 1973-1978 MCFL also engaged in marches and picketing to secure pro-life platforms at political gatherings and in lobbying of elected representatives on pro-life issues.

#### *MCFL Newsletter: History*

19. During the period 1973-1978, the primary avenue of communication among MCFL and its mem-



bers was the MCFL Newsletter. It dated back to the very inception of MCFL; the first edition was published in January, 1973, the month when MCFL was incorporated. Thereafter, through 1978, the MCFL Newsletter was distributed relatively regularly (1973: 3 times; 1974: 5 times; 1975: 8 times; 1976: 8 times; 1977: 5 times; 1978: 4 times), the lapses were usually attributable to insufficient funds. Copies of all MCFL newsletters printed during the period 1973-1978 are attached hereto as *Exhibit B*.

20. During the period 1973-1978 contributing members automatically received the MCFL Newsletter by mail. In addition, at various times the MCFL Newsletter was mailed or distributed to all MCFL members.

21. During the period 1973-1978 MCFL paid all expenses for the preparation, printing and distribution of the MCFL Newsletter. These costs were met through the contributions, dues and fund raising activities described above in paragraphs 7-8.

22. During 1973-1978 the MCFL Newsletter was prepared entirely by MCFL members, some of whom were paid staff persons.

23. During the period 1973-1978 the MCFL Newsletter typically contained information on both past and upcoming MCFL activities and appeals for volunteers and contributions. It also included material on political, administrative, judicial and legislative developments, such as the results of hearings on bills and constitutional amendments before legislative committees, the status of particular legislation, the outcome of referenda, developments in court cases, and the results of hearings before administrative agencies. These reports were usually coupled with appeals urging MCFL members to write or call the decision-

makers and voice their support of the pro-life position. The MCFL Newsletter often also contained reports on the media, as well as excerpts from articles in local and national newspapers and profiles or opinions of individuals active in the pro-life cause.

#### *MCFL Activities: Purpose in Organizing*

24. Almost all of the activities described in paragraphs 12 to 23 above were, during the period 1973-1978, accomplished by MCFL members, most of whom were volunteers. In 1978, MCFL had only two paid staff persons. (Both of them were MCFL members.)

25. Many of the MCFL volunteers and members are individuals who were not previously involved in political or legislative affairs.

26. From the start MCFL sought to increase the number of members and the numbers of chapters for the purpose of being heard in the political arena. In the first year after MCFL's incorporation, in its September, 1973 MCFL Newsletter, a copy of which is attached as *Exhibit C*, MCFL noted:

Our goal is to form MCFL chapters in every city and town in Massachusetts and to gain as many members as we can. \* \* \* Our purpose in seeking these goals is to build up the strength necessary to move for appropriate action our congressmen in whose hands are contained our chances of fulfilling our ultimate goal—a mandatory constitutional amendment [securing the right to life].

MCFL Newsletter at 3 (Vol. 1, No. 3, September, 1973).

27. MCFL also early recognized the importance of communication to fulfill these organizational goals. In the October, 1974 MCFL Newsletter, a copy of which is attached as *Exhibit D*, it noted.

It is true that in order to obtain our goal of a mandatory constitutional human life amendment . . . , it is most necessary to build a strong political base . . . . [T]his end cannot be achieved unless we can raise the money that is vitally needed to support our organization . . . . Among the many financial needs MCFL has is money for communication purposes. The cost of telephone and newsletters . . . make up some of our biggest bills. *Without frequent communication no organization can operate effectively*, and without money there can be no adequate state-wide communication \* \* \* In numbers there is strength . . . .

MCFL Newsletter at 1-2 (Vol. 2, No. 4, October, 1974) (emphasis added). Also, in the minutes of the May 4, 1973 meeting of the executive board of the Board of Directors and the chapter training session, attached hereto as *Exhibit E*, it says

Again, it was pointed out that an efficient communications network is absolutely essential to the organization—both on the local and state levels. The function of the main office lies in correlating and disbursing important information but it cannot be stressed too clearly that *MCFL is not the Office in Newton but, rather it is the individuals within the framework of the organization.*

Minutes of Board of Directors/Chapter Chairman Training Meeting, May 4, 1973 at 1 (emphasis added).

### *Administrative Proceedings*

28. In July, 1979, MCFL received notice from the Federal Election Commission ("FEC") that it had determined there was reason to believe that MCFL had violated 2 U.S.C. § 441b. A copy of that notice is attached hereto as *Exhibit F*.

29. In August, 1980, MCFL received a copy of the FEC's "Probable Cause Brief." A copy of that brief is attached hereto as *Exhibit G*.

Signed and sealed under the pains and penalties of perjury this 9th day of July, 1982.

/s/ Philip D. Moran

Then appeared before me the above-named Philip D. Moran, known to me, and, having been by me duly sworn, stated that he had read and executed the foregoing affidavit and that the contents thereof were true to the best of his knowledge.

/s/ Lesley-Elizabeth Tucker  
Notary Public

My Commission Expires:  
2 April 1987

## EXHIBIT A

## THE COMMONWEALTH OF MASSACHUSETTS

JOHN F. X. DAVOREN

*Secretary of the Commonwealth*

State House

Boston, Mass. 02133

## ARTICLES OF ORGANIZATION

(Under G.L. Ch. 180)

Incorporators

NAME

RESIDENCE

*Include given name in full in case of natural persons; in case of corporation, give state of incorporation.*

PHILIP D. MORAN, 10 Verona Street, Lynn, Mass.  
01904

The above-named incorporator(s) do hereby associate (themselves) with the intention of forming a corporation under the provisions of General Laws, Chapter 180 and hereby state(s) :

1. The name by which the corporation shall be known is:

MASSACHUSETTS CITIZENS FOR LIFE,  
INC.

NOTE: If provisions for which the space provided under Articles 2, 3 and 4 is not sufficient, additions should be set out on continuation sheets to be numbered 2A, 2B, etc. Indicate under each Article where the provision is set out. Continuation sheets shall be on 8½" x 11" paper and must have a left-hand margin 1 inch wide for binding. Only one side should be used.

2. The purposes for which the corporation is formed are as follows:

To foster respect for human life and to defend the right to life of all human beings, born and unborn, through educational political and other forms of activities and in addition to engage in any other lawful act or activity for which corporations may be organized under Chapter 180 of the General Laws of the Commonwealth of Massachusetts.

If the corporation has more than one class of members, the designation of such classes, the manner of election or appointment, the duration of membership and the qualification and rights, including voting rights of the members of each class, are as follows:—

NONE

Other lawful provisions, if any, for the conduct and regulation of the business and affairs of the corporation, for its voluntary dissolution, or for limiting, defining, or regulating the powers of the corporation, or of its directors or members, or of any class of members, are as follows:—

NONE

5. By-laws of the corporation have been duly adopted and the initial officers, president, treasurer and clerk or other presiding, financial or recording officers whose names are set out below, have been duly elected.
6. The effective date of organization of the corporation shall be the date of filing with the Secretary of the Commonwealth or if later date is desired,



specify date, (not more than 30 days after date of filing.)

7. The following information shall not for any purpose be treated as a permanent part of the Articles of Organization of the corporation.

a. The post office address of the initial principal office of the corporation in Massachusetts is:

430 Centre Street, Newton, Massachusetts  
02158

b. The name, residence, and post office address of each of the initial directors and following officers of the corporation are as follows:

Name	Residence	Post Office Address
------	-----------	---------------------

President: Roy Scarpato,	30 Rolling Lane,	Wayland, Mass. 01778.
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Treasurer: Richard Carey,	430 Centre St.,	Newton, Mass. 02158
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Clerk: Philip D. Moran,	10 Verona St.,	Lynn, Mass. 01904.
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Directors: (or officers having the powers of directors)

Roy Scarpato,	30 Rolling Lane,	Wayland, Mass. 01778.
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Richard Carey,	430 Centre St.,	Newton, Mass. 02158.
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Philip D. Moran,	10 Verona St.,	Lynn, Mass. 01904
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Jean Svagsdys,	37 May Ave.,	Brockton, Mass.
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Patricia Lally,	22 Tucker Terrace,	Randolph, Mass. 02362.
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Frank O'Connor,	56 Prospect St.,	Shrewsbury, Mass. 01545.
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Irving E. Kane,	24 Longbow Circle,	Lynnfield, Mass. 01940.
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Mary Young,	16 Marlboro St.,	Newton, Mass. 02158.
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c. The date initially adopted on which the corporation's fiscal year ends is:

December 31st.

d. The date initially fixed in the by-laws for the annual meeting of members of the corporation is:

Fourth Friday in January.

e. The name and business address of the resident agent, if any, of the corporation is:

None.

IN WITNESS WHEREOF and under the penalties of perjury the above-named INCORPORATOR(S) sign(s) these Articles of Organization this 21st day of January 1973.

/s/ [Illegible]

The signature of each incorporator which is not a natural person must be [illegible].

## THE COMMONWEALTH OF MASSACHUSETTS

ARTICLES OF ORGANIZATION  
GENERAL LAWS, CHAPTER 180

I hereby certify that, upon an examination of the within-written articles of organization, duly submitted to me, it appears that the provisions of the General Laws relative to the organization of corporations have been complied with, and I hereby approve said articles; and the filing fee in the amount of \$30.00 having been paid, said articles are deemed to have been filed with me this 26th day of January, 1973.

*Effective date*

/s/ John F. X. Davoren  
JOHN F. X. DAVOREN  
Secretary of the  
Commonwealth

TO BE FILLED IN BY CORPORATION  
CHARTER TO BE SENT TO

599-1905

PHILIP D. MORAN, ESQUIRE

10 Verona Street

Lynn, Massachusetts 01904

Filing Fee: \$30.00 CHARTER MAILED Illegible  
" DELIVERED Illegible

Lynn, Newton & Wayland 1-30-73

UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF MASSACHUSETTS

Misc. Action No. 82-0609-G

FEDERAL ELECTION COMMISSION, PLAINTIFF

v.

MASSACHUSETTS CITIZENS FOR LIFE, INC., DEFENDANT

## AFFIDAVIT OF MARIANNE REA-LUTHIN

I, Marianne Rea-Luthin, hereby depose and state:

1. My name is Marianne Rea-Luthin. I am, and since 1973, have been a member of Massachusetts Citizens for Life, Inc. ("MCFL"). I am currently president of MCFL.

2. From approximately July to October, 1978 I was executive director of MCFL. In 1978 I was the editor of the special election editions of the MCFL newsletter described below in ¶¶ 8-19. I had final responsibility for the content and layout of those editions. I have personal knowledge of the matters stated herein.

*MCFL Newsletter: History*

3. During the period 1973-1978, the primary avenue of communication among MCFL and its members was the MCFL Newsletter. It dates back to the very inception of MCFL; MCFL's records kept in the ordinary course of its business indicate that the first

edition was published in January, 1973, the month when MCFL was incorporated. Those records indicate that thereafter, through 1978, the MCFL Newsletter was distributed relatively regularly (1973: 3 times; 1974: 5 times; 1975: 8 times; 1976: 8 times; 1977: 5 times; 1978: 4 times), the lapses were usually attributable to insufficient funds. Copies of all MCFL newsletters printed during the period 1973-1978 are attached to the Affidavit of Philip D. Moran as *Exhibit B*.

4. During the period 1973-1978 contributing members automatically received the MCFL Newsletter by mail. In addition, at various times the MCFL Newsletter was mailed or distributed to all MCFL members.

5. During the period 1973-1978 MCFL paid all expenses for the preparation, printing and distribution of the MCFL Newsletter. These costs were met through contributions and dues paid to MCFL and its fund raising activities. During the period 1973-1978, these fund-raising activities included activities such as garage sales, cake sales, bike-a-thons, fashion shows, brunches, picnics, yard sales, dinners, dances, raffles, auctions, furniture sales, wine-tasting parties, MCFL night at the Boston Pops, MCFL night at the Red Sox, flower sales, and cookbook sales.

6. During 1973-1978, the MCFL Newsletter was prepared entirely by MCFL members, some whom were paid staff persons.

7. During the period 1973-1978 the MCFL Newsletter typically contained information on both past and upcoming MCFL activities and appeals for volunteers and contributions. It also included material on political, administrative, judicial and legislative developments, such as the results of hearings on bills and constitutional amendments before legislative

committees, the status of particular legislation, the outcome of referenda, developments in court cases, and the results of hearings before administrative agencies. These reports were usually coupled with appeals urging MCFL members to write or call the decisionmakers and voice their support of the pro-life position. The MCFL Newsletter often also contained reports on the media, as well as excerpts from articles in local and national newspapers and profiles or opinions of individuals active in the pro-life cause.

#### *MCFL Newsletter: Special Election Editions*

8. During 1973-1978, in periods prior to elections, MCFL regularly printed "Special Election Editions" of the MCFL newspaper. The first such "Special Election Edition" was printed in September, 1974; two other such editions were printed before September, 1978.

9. The "Special Election Editions" referred to in the preceding paragraph included information on candidates' positions on certain issues. The publication of the position of the candidates was intended as an educational service for concerned voters, not as an endorsement of particular candidates. It began in response to a deluge of inquiries to the MCFL office for information concerning the position of candidates on pro-life issues.

10. In September, 1978, MCFL published a "Special Election Edition" of the MCFL Newsletter. A copy of that edition is attached hereto as *Exhibit A*.

11. The September, 1978 "Special Election Edition" disseminated information on the voting records and responses to questionnaires of candidates running in the September 19, 1978 primary. The Newsletter



states that the "[MCFL] election survey is an educational service to help you cast an informed vote when you go to the polls . . . ." Special Election Edition at 1.

12. The "Special Election Edition" referred to 50 candidates for federal office and 442 candidates for state office. It reported their positions on three central pro-life issues: (1) a "constitutional Human Life Amendment," (2) legislation to prohibit the use of tax funds for abortions, and (3) legislation to provide positive alternatives to abortion. The positions of the incumbents were determined by reference to roll call votes; the positions of the non-incumbents were determined by responses to MCFL questionnaires.

13. Shortly thereafter, MCFL printed and distributed a partial "Special Election Edition" of the MCFL Newsletter. A copy of this partial "Special Election Edition" is attached hereto as *Exhibit B*. It was printed for the sole purpose of correcting minor errors in the earlier full Edition's reporting of the voting records of Congressmen Tsongas, Studds and Drinan.

14. I, and one other MCFL member, Anne Fox, edited and prepared both the September, 1978 "Special Election Edition" and the partial "Special Election Edition."

15. In compiling the voting records of the incumbent federal candidates listed on p. 2 and 7 of the "Special Election Edition," we used records of votes printed in the *Congressional Quarterly* and the *Congressional Record*. We did not communicate with the incumbent federal candidates, their campaign workers or their political committees with respect to the text of either edition or their distribution.

16. In determining the positions of the non-incumbent federal candidates listed on p. 2, 7 and 8 of the "Special Election Edition," MCFL sent each such candidate a questionnaire and a cover letter in the form attached hereto as *Exhibit C* and *D*, respectively. In addition, in cases when the questionnaire was not returned to MCFL, we made follow-up telephone calls for the purpose of confirming the receipt of the questionnaire. We had no other communications with the non-incumbent candidates, their campaign workers or their political committees with respect to the text of either edition or their distribution.

17. We made no arrangements with any federal candidates listed in either edition or with their campaign workers or political committees to coordinate or prearrange the preparation of the newsletter. Both editions specifically note that "[t]his special election edition does not represent an endorsement of any particular candidate."

18. The approximate total cost of the preparation, printing and distribution of the "Special Election Edition" and the partial "Special Election Edition" was approximately \$9,812.76.

19. The cost of the preparation, printing and distribution of the "Special Election Edition" and the partial "Special Election Edition" were borne entirely by funds contributed or donated to MCFL or raised by it in the manners set forth in ¶ 5 above. No candidate, political or campaign committee, and no corporation contributed any money used to defray the costs of preparing, printing, or distributing the two editions.

20. If, in my capacity as editor of the MCFL newsletter in 1978, I had had to determine whether a phrase or word used in association with a candi-

date in a newsletter was "like" or "similar" to the following phrases: "vote for," "elect," "support," "cast your ballot for," "Smith for Congress," "vote against," "defeat," or "reject," in order to avoid violation of federal laws, I would have been so uncertain of what other phrases or implications might be encompassed, that I would substantially cut back the contents of the feature or story in question.

Signed and sealed under the pains and penalties of perjury this 12th day of July, 1982.

/s/ Marianne Rea-Luthin

Then appeared before me the above-named Marianne Rea-Luthin, known to me, and, having been by me duly sworn, stated that she had read and executed the foregoing affidavit and that the contents thereof were true to the best of her knowledge.

/s/ Ramona Albino  
Notary Public

My Commission Expires: 3/4/88

UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF MASSACHUSETTS

Misc. Action No. 82-0609-G

FEDERAL ELECTION COMMISSION, PLAINTIFF

v.

MASSACHUSETTS CITIZENS FOR LIFE, INC., DEFENDANT

AFFIDAVIT OF ANNE FOX

I, Anne Fox, hereby depose and state:

1. My name is Anne Fox. I am, and since 1973, have been a member of Massachusetts Citizens for Life, Inc. ("MCFL"). I have personal knowledge of the matters stated herein.

2. In September, 1978, MCFL published a "Special Election Edition" of the MCFL Newsletter. A copy of that edition is attached hereto as *Exhibit A*.

3. The September, 1978 "Special Election Edition" disseminated information on the voting records and responses to questionnaires of candidates running in the September 19, 1978 primary. The Newsletter states the "[MCFL] election survey is an educational service to help you cast an informed vote when you go to the polls . . . ." Special Election Edition at 1.

4. The "Special Election Edition" referred to 50 candidates for federal office and 442 candidates for state office. It reported their positions on three central pro-life issues: (1) a "constitutional Human Life

Amendment," (2) legislation to prohibit the use of tax funds for abortions, and (3) legislation to provide positive alternatives to abortion. The positions of the incumbents were determined by reference to roll call votes; the positions of the non-incumbents were determined by responses to MCFL questionnaires.

5. Shortly thereafter, MCFL printed and distributed a partial "Special Election Edition" of the MCFL Newsletter. A copy of this partial "Special Election Edition" is attached hereto as *Exhibit B*. It was printed for the sole purpose of correcting minor errors in the earlier full Edition's reporting of the voting records of Congressmen Tsongas, Studds and Drinan.

6. I, and one other MCFL member, Marianne Rea-Luthin, edited and prepared both the September, 1978 "Special Election Edition" and the partial "Special Election Edition."

7. In compiling the voting records of the incumbent federal candidates listed on p. 2 and 7 of the "Special Election Edition," we used records of votes printed in the *Congressional Quarterly* and the *Congressional Record*. We did not communicate with the incumbent federal candidates, their campaign workers or their political committees with respect to the text of either edition or their distribution.

8. In determining the positions of the non-incumbent federal candidates listed on p. 2, 7 and 8 of the "Special Election Edition," MCFL sent each such candidate a questionnaire and a cover letter in the form attached hereto as *Exhibit C* and *D*, respectively. In addition, in cases when the questionnaire was not returned to MCFL, we made follow-up telephone calls for the purpose of confirming the receipt of the questionnaire. We had no other commu-

nications with the non-incumbent candidates, their campaign workers or their political committees with respect to the text of either edition or their distribution.

9. No arrangements with any federal candidates listed in either edition or with their campaign workers or political committees to coordinate or prearrange the preparation of the newsletter. Both editions specifically note that "[t]his special election edition does not represent an endorsement of any particular candidate."

Signed and sealed under the pains and penalties of perjury this — day of July, 1982.

[unexecuted]

Then appeared before me the above-named Anne Fox, known to me, and, having been by me duly sworn, stated that she had read and executed the foregoing affidavit and that the contents thereof were true to the best of her knowledge.

[unexecuted]

Notary Public

My Commission Expires:



[1] UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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Misc. Action No. 82-0609-G

FEDERAL ELECTION COMMISSION, PLAINTIFF,

v.

MASSACHUSETTS CITIZENS FOR LIFE, INC., DEFENDANT.

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DEPOSITION of PHILIP D. MORAN, a witness called on behalf of the Plaintiff, taken pursuant to the Federal Rules of Civil Procedure, before Ralph J. Simpson, Registered Professional Reporter and Notary Public in and for the Commonwealth of Massachusetts, at the U.S. Customs House Courtroom, 13th Floor, No. 2 India Street, Boston, Massachusetts, on Thursday, August 10, 1982, commencing at 12:15 p.m.

PRESENT:

R. Lee Andersen, Esq. and Lawrence M. Noble, Esq., Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463, for the Plaintiff.

Bingham, Dana & Gould (by Francis H. Fox, Esq.), 100 Federal Street, Boston, Massachusetts 02110, for the Defendant and the deponent.

. . . . .

[22] A. I'm not aware of any.

\*Q. Notwithstanding the provision in the 1973 articles of organization that we discussed under Par-

agraph No. 3, did MCFL have a policy with respect to membership during that period of time?

A. Yes.

MR. FOX: You mean written policy or are you asking for his observations of how they may have handled membership? I'd like it to be clear.

MR. ANDERSEN: My first question is as an observation is he aware of whether or not there was a policy, written or not.

MR. FOX: I guess I will object. I don't mind his telling you what he's observed and I don't mind him telling you about a written policy that he knows exists or has seen, but I don't want him making policy right here on the spot by answering your question.

MR. ANDERSEN: Could you read that question back that I asked?

\*(Record read)

MR. FOX: Having said whatever I just said, my objection is to the ambiguity in the question.

MR. ANDERSEN: Are you directing— [23] occurred initially and then we were referring to when the class was differentiated to three groups. That's what I thought you responded to.

A. The best of my knowledge, my response was I don't know who proposed it, and then I don't know what the next question was.

MR. FOX: I'm not saying I know the facts are contrary. I'm saying I'm not sure that there were indeed three classes for that whole period of time, but you can clear that up.

Q. Let's start with the dues-paying members. What were the rights of dues-paying members?

A. When?

Q. We're talking about the period between 1973 and 1978.

A. As I indicated, initially there was class and that would include anyone who made a contribution or anyone who accepted the corporate purpose, and at some point in time there was a differentiation made between dues-paying members, contributing members and general members, and that differentiation was that the Massachusetts Citizens for Life indicated that if you paid \$15, you were entitled to receive—in addition to whatever [24] a good place to break because I do want to ask you some questions that will take some time.

(Short recess)

Q. I'd like to refer back to a discussion a few moments ago concerning the possibility that MCFL considered filing as a 501C(4) group. Was the filing of—this is during the period between '73 and '78. Was filing a 501C(4) tax form discussed by the board?

A. Yes.

Q. Did the board ever adopt a resolution to make such a filing?

MR. FOX: Back in '78 and earlier?

MR. ANDERSEN: Between '73 and '78.

A. My only recollection of the discussion was whether in fact a form 501C(4) had been filed, and there was some controversy as to whether it had or had not.

Q. But you did not assist in filling out the form, did you?

A. No, I had nothing to do with it.

Q. On the board of directors prior to 1978, how was the board of directors selected during that period of time?

[25] A. At the annual meeting certain people would be elected for three-year periods—initially I believe everyone was just elected for a year, and then they would resign and other people would be recommended who in fact would be willing to serve, and there would be an election. At some point in time there was I believe it was either a policy or a policy change or bylaw change that one-third of the members would be elected for a three-year period, one-third for a two-year period and one-third for a one-year period so that there would be a continuum or continuity of directors.

Q. Was the voting for the officers and board of directors open to the membership?

A. No.

Q. Who voted for directors?

A. The directors.

Q. Was this changed under the 1980 articles of organization?

A. Yes.

Q. Is the vote for the board of directors now open to a vote of the members under the articles of organization post 1980?

A. The dues-paying members.

[26] Q. During the period 1973 to 1978, how many classes of members do you understand MCFL to have had?

A. Well, as I stated earlier, initially there was one class, and then at some point in time, and I don't know when, there was dues-paying members and then there were contributing members and there were general members. So I guess the answer is specifically three.

Q. Are you saying that initially there was just one class?

A. Yes.

Q. And what did one have to do to become a member of that class of members?

A. Accept the statement of purpose of Massachusetts Citizens for Life and indicate that acceptance somehow or other in one form or another.

Q. Do you recall who established that initial class?

A. The people who incorporated the corporation.

Q. Was that the board of directors?

A. Yes.

Q. What became the board of directors.

A. Yes.

[27] Q. Was it the board of directors that then differentiated that class into the dues-paying, contributing and non-contributing members?

A. I believe it was, yes.

Q. Do you recall whether you participated in discussions concerning that question of who could be considered a member of MCFL?

A. Initially?

Q. Start with initially.

A. Yes.

Q. Do you recall who proposed differentiating the one class into the three?

A. I don't know who proposed it, no.

Q. Do you recall whether you thought this was a good idea at the time?

A. Yes.

Q. So you supported that decision to have three classes during the 1973 to 1978 period.

A. At some point in time I supported it.

MR. FOX: I'm not clear that's an accurate question, the factual assumptions. He said initially, and I don't know that he meant right up through '78.

Q. I thought we had a response to what had [28] occurred initially and then we were referring to when the class was differentiated to three groups. That's what I thought you responded to.

A. The best of my knowledge, my response was I don't know who proposed it, and then I don't know what the next question was.

MR. FOX: I'm not saying I know the facts are contrary. I'm saying I'm not sure that there were indeed three classes for that whole period of time, but you can clear that up.

Q. Let's start with the dues-paying members. What were the rights of dues-paying members?

A. When?

Q. We're talking about the period between 1973 and 1972.

A. As I indicated, initially there was one class and that would include anyone who made a contribution or anyone who accepted the corporate purpose, and at some point in time there was a differentiation made between dues-paying members, contributing members and general members, and that differentiation was that the Massachusetts Citizens for Life indicated that if you paid \$15, you were entitled to receive—in addition to whatever [29] membership benefits accrued to one, you were entitled to receive the National Right To Life News.

\*Q. What other memberships (sic) accrued to that group of persons?

A. None that I'm aware of.

MR. FOX: Would you read that question for me, please?

\*(Record read)

Q. It should have been what other benefits accrued to that group of persons.



A. Well, a member of Mass. Citizens could come to any board meeting. He could become part of any social function or any fund-raising event or whatever else they did.

Q. Could a member of the general public come to a board meeting?

A. As long as he was invited by one of the members, a member.

Q. Could a member of the general public come to a fund-raising activity?

A. Yes.

Q. Again referring to the dues-paying members, whenever they were established during the period of 1973 to '78, what were their duties to MCFL?

[30] A. None.

Q. Considering the group that we're calling contributing members during that period 1973 to 1978, did that group of persons receive the National Right To Life News? Excuse me. The MCFL Newsletter?

A. To the best of my knowledge, yes.

Q. Did that group of persons receive the National Right To Life Committee News?

A. Not through Mass. Citizens. Excuse me. One other benefit that did go to dues-paying members was that they received Massachusetts Citizens for Life newsletters, newspapers.

Q. Again considering talking about the contributing members, did they receive any other benefits from MCFL?

A. Other than receiving the newspaper?

Q. The newsletter.

A. And whatever else, whatever other benefits, the same benefits. They received the same benefits as the dues-paying members except that they did not receive a copy of the National Right to Life News through Massachusetts Citizens for Life.

Q. Thank you. Did they have any duties to MCFL?

[31] A. No.

Q. Let's consider the third group of non-contributing members. What benefits accrued to them through their membership in MCFL?

A. The same benefits that accrued to the other two, and other than a newspaper or newsletter, except sometimes when we could afford to send it to the overall membership, we would send it, the newsletter to everybody who we considered a member.

Q. Do you know which of the newsletters were sent to the entire group?

A. I know that the—do I have personal knowledge of which newsletters were sent? The answer is no.

Q. Are there records of which newsletters were sent to the entire group?

A. To the best of my knowledge, yes.

Q. Who would be the person that maintains those records at MCFL?

A. The current executive director.

Q. Were the differentiations in classes during the period '73 to '78, whenever it was that the differentiation began, was that a policy that was voted upon by the board of directors?

[32] A. I honestly don't know.

Q. I want to direct your attention to Exhibit A, Page 3, Paragraph 5.

MR. ANDERSEN: Off the record.

(Discussion off the record)

Q. Paragraph 5 on Page 3, Exhibit A, states that, "From its incorporation, through 1978, MCFL recognized as a member any person who had signified

his or her agreement with MCFL's statement of purpose"; is that correct?

A. Yes.

Q. Did the board of directors make the decision to adopt this as a way to recognize as a member any given person?

A. It's my belief, yes.

Q. Were you, as an original incorporator and an original director, a person who voted for this procedure described in Paragraph No. 5?

A. If indeed there was a vote, I voted for it.

Q. Under this policy, who had the responsibility of judging whether a person had signified such agreement?

A. The executive director.

Q. Did the executive director personally make [33] decisions on each potential member?

A. No.

Q. This was rather the policy then of MCFL and could be executed by any member of the board of directors?

A. I don't understand your question.

Q. What persons in the organization had the authority to recognize a person who had made a statement agreeing with MCFL's statement of purpose as a member?

A. It was our policy that any person who signified his or her agreement with the statement of purpose was automatically a member. The executive director kept a record of those people so that in fact we could disseminate information to them.

Q. But there was not necessarily a record of their statement signifying agreement with MCFL's purpose; is that correct?

A. There was some record of some agreement with the statement of purpose.

Q. Have these records been maintained?

A. I don't know.

Q. So this would be a matter the current executive director would have personal knowledge of, [34] whether or not the records had been maintained?

A. I don't know what the current executive director has a personal knowledge of or not.

Q. Referring now on Page 3 of Exhibit A, Paragraphs 5, 6 and 7 essentially state that of 57,000 members, contributing or dues-paying members numbered 5,936; is that correct?

A. That's correct.

MR. ANDERSEN: I have here "ANSWERS AND OBJECTIONS OF MASSACHUSETTS CITIZENS FOR LIFE, INCORPORATED TO INTERROGATORIES PROPOUNDED BY FEDERAL ELECTION COMMISSION" dated the 6th day of May, 1982 signed by Henry C. Luthin. I'd like to have this marked as Exhibit D.

(Commission Moran Exhibit D marked for identification).

Q. Would you please take a look at that and tell me if you're familiar with it at all?

A. I've never seen this before.

Q. Did you assist in the preparation of the MCFL response to the Commission's interrogatories?

A. No. Not these interrogatories.

Q. I direct your attention to Page 15 of Exhibit D, No. 21b. The statement is that "MCFL [35] determined that a person agrees with its statement of purpose when such person so signifies through signing forms, coupons, or petitions or through oral

communications with MCFL." Would the witness agree that that's a fair statement of the policy with respect to membership during the period 1973 to '78?

A. Yes.

Q. Do you know of any additional ways that MCFL used to determine during that period whether a person agreed with their statement of purpose?

A. Other than the four that are mentioned here?

Q. That's right.

A. I'm not familiar with any other.

MR. FOX: There would be a letter, I suppose.

MR. ANDERSEN: In the production of documents that MCFL has made to the Commission, we have a variety of newsletters and some forms. Actually also in the attachments to your affidavit are a variety of materials from MCFL. I'd like the court reporter to mark this as Exhibit E.

(Commission Moran Exhibit E marked for identification).

Q. Would you review that, please.

[36] A. Okay.

Q. Is this an example of a form for membership?

A. I would consider it an example of a form for membership.

Q. How would a person first obtain one of these forms?

A. In a variety of ways. They could pick one up from a member. They could pick one up at a booth, for example, at the Marshfield or Topsfield Fair. They could pick one up in the office.

Q. Has MCFL used a variety of forms similar to Exhibit E?

A. There have been more than one, but I have no idea how many we have used.

Q. What would be the next step then in becoming a member through signing a form?

A. The next step for the corporation?

Q. The next step for a potential member.

A. They would have to do nothing other than send this to the corporation and then they would be placed on a mailing list of the corporation.

Q. If at that point they had not sent in any money whatsoever, would their membership have been segregated from those persons who might have sent [37] this form in with a check for some amount of money?

A. It's my belief it would be.

Q. And those that sent in \$15 or more and those that sent in some amount of money less than \$15 would also have been segregated?

A. That's my understanding, yes.

Q. And a permanent record would be made. No matter whether or not a person sent in money, a permanent record would be made based on this form.

A. Yes.

Q. At this point in time right now would it be possible to determine from an examination of the files whether a person sent—of those persons that became members by filling out a form such as or similar to this one, would it be possible to determine which of those persons became members by sending in such a form?

A. It's my understanding that yes, you could.

Q. Would you know what proportion of persons becoming members of MCFL prior to 1978, prior to and including 1978, became members by mailing in a form such as Exhibit E?

A. No.

Q. What would be the difference between a form [38] such as this and a coupon which is mentioned



in the response to the Commission's interrogatories, Exhibit D?

\*A. Coupons, they're referring to—I believe the coupons they are referring to were what were then called A&P coupons, and A&P was a chain grocery store that one day a week for a period of time had a method by which anyone buying anything in the store could sign a coupon designating a charity of their choice and A&P would send a certain percentage of whatever your grocery bill was to that charity of your choice along with the coupon as to who designated you as their favorite chart.

Q. If you filled out one of these coupons, then you would become a member of MCFL.

A. Yes.

MR. ANDERSEN: I ask the court reporter to mark this as Exhibit F. This was a copy, Mr. Fox, that you had, and your notations are on there, but let's mark it Exhibit F anyway.

(Commission Moran Exhibit F marked for identification)

Q. I ask you to take a look at that with specific reference to this page, sir, about one- [39] third of the way through. I don't know how to describe it any better than that. It's the front page—it's the third page of Volume 5, No. 4, and they are in order. I direct your attention to the upper right-hand corner of the page. Is this the A&P coupon to which you referred in your earlier testimony?

A. It appears to be.

MR. ANDERSEN: Can I ask the court reporter to repeat Mr. Moran's response as to what A&P did? I don't want to ask him a repetitive question.

\*(Record read)

Q. When MCFL received such coupons, would the coupon remain part of the file for that member?

A. I don't know that.

Q. After a person sent in this coupon to MCFL, what would the person receive back from MCFL?

A. Well, they would receive a letter in January requesting that the person make a donation to MCFL.

Q. Were they notified at that point that they were a member of MCFL?

A. I don't know that—the letter is an annual letter sent from the then president to every [40] member.

Q. Did the person who had mailed in such an A&P coupon receive a specific letter directed to him or her saying that you are now a member of MCFL or words to that effect?

A. The salutation may have been "Dear Member of MCFL." I don't recall specifically.

MR. ANDERSEN: Off the record.

(Discussion off the record.)

MR. ANDERSEN: Back on the record.

Q. So then with respect to a person who had sent in an A&P coupon, between the time that the coupon was sent in to MCFL and the January letter, they would have received nothing from MCFL?

A. Unless there was a newsletter sent to every member.

Q. During 1978, how many such newsletters were sent to every member?

A. I don't know.

Q. Can I ask you who would be in a position to know that information?

A. Marianne Rea-Luthin would probably be the best person to know.

MR. FOX: Did we indicate that in answers [41] to interrogatories?

MR. ANDERSEN: I wanted to ask about that. It appears from the response to one of the interrogatories that one newsletter in each of the years that Election Editions went out went to the full membership. That is a little unclear to me.

Q. Let me ask you one final question with respect to coupons. Would a person be issued a membership card?

A. I don't think so.

MR. ANDERSEN: I have here what appears to be a petition with the "MASSACHUSETTS CITIZENS FOR LIFE, INCORPORATED" at the heading. In addition, there is another what appears to be a form for becoming a member of MCFL, and a January 1973 newsletter designated "Number 1." I ask you to mark that as Exhibit G.

(Commission Moran Exhibit G marked for identification)

Q. Would the witness please take a look at this Exhibit G.

A. Okay.

Q. I direct your attention to the first two pages of the petition. Would this be an example of [42] the petition referred to in Exhibit D?

A. Yes.

Q. Is this the only petition that MCFL circulated?

A. I really don't know.

Q. This petition was, though, used for establishing membership in MCFL?

A. Yes, it was.

MR. FOX: Would it appear that Pages 3 and 4 should be after 1 and 2 here?

MR. ANDERSEN: Excuse me? Off the record.

(Discussion off the record.)

MR. FOX: I would like the record to show that there may be some confusion in Exhibit G as to the numbering of pages or whether it's all supposed to be one document, but I understand counsel is going to inquire mostly on the first two pages.

MR. ANDERSEN: The record should reflect that it is not the Commission's position that this is all one document. We're not trying to say that.

Q. Again directing your attention to the petition, do you know when this petition, this particular petition, was circulated?

A. There were many of these petitions [43] circulated in early 1973 and following for some period of time.

Q. Were petitions such as this circulated every year between 1973 and 1978?

A. I don't know.

Q. Do you know how many signatures even approximately MCFL obtained on these petitions?

A. Not on these petitions, no.

Q. Does MCFL have a record of the signed petitions?

A. The actual signed petitions? I don't know whether they do or don't.

Q. The signed petitions were used to establish membership for those persons who signed the petition?

A. Yes.

Q. Do you know whether MCFL has kept a record of those members who became members of the organization through signing petitions such as this, Exhibit G?

A. It's my belief they have.



Q. Would you know what percentage of the 57,000-some-odd members that you mentioned in your affidavit, Exhibit A, would have become members through a petition such as this?

[44] A. No, I do not.

Q. What would have happened after a person signed a petition such as this? What—let me rephrase that. What would the next thing a person who had signed such a petition have received from MCFL?

A. Either the annual appeal letter or a newsletter if one went to the general membership before the annual appeal letter.

Q. The same as with the A&P coupon and the same as a form.

A. Yes.

Q. The fourth method by which MCFL ascertained agreement with its statement of purpose was said to be, in the response to Commission's interrogatories marked Exhibit D, oral communication with MCFL.

A. Yes.

Q. How would such a membership come about?

A. My understanding is that someone would see or hear of something about the organization and would call the office to get more information and would leave their name and address.

Q. Would they have to do more than call and leave their name and address?

[45] A. No.

Q. They would not specifically have to state that they agree with MCFL's statement of purpose during the oral communication?

A. I really—I never answer the phone at MCFL, so I really don't know what specifically they were

asked or—I really don't know what the procedure was.

Q. It is, however, your understanding that if a person called up and inquired about MCFL's activities and they gave their name and address, that they would be considered to be members.

A. That's my understanding.

Q. And as in the case of the other three methods, the communications from MCFL would have followed with the annual appeal letter or the newsletter if one was being circulated during that time period; is that correct?

A. Yes.

Q. Do you know whether the records of MCFL would reflect those persons who became members through orally communicating with MCFL?

A. I have no way of knowing that.

Q. Does MCFL or did MCFL keep a list of [46] telephone requests for information during that period of time 1973 to '78?

A. Segregated from other requests? I have no way of knowing.

Q. I'd like to direct your attention to Exhibit D. MR. ANDERSEN: Off the record.

(Discussion off the record)

Q. Exhibit D, Page 4, 6c at the bottom of that page. This is referring to the present method by which MCFL establishes membership under the 1980 articles of organization. It states, "Those persons who wish to assist the corporation in furtherance of its purposes as set forth in the articles of organization, and who affirmatively express in writing a specific and unambiguous desire to be a member of the corporation." This is apparently a description of how



a non-voting member becomes a member. Is that your understanding of the present policy?

MR. FOX: I, of course, object to 1980 procedures as being irrelevant.

A. The answer is yes.

MR. FOX: The same objection that I stated [47] before. Go ahead. Your answer is what?

THE WITNESS: Yes.

Q. This is a change from the policy since 1973 to 1978, '79. Was this change adopted by the board of directors prior to the filing of the new articles of organization?

A. I believe so.

Q. And under this present policy a writing is required; is that correct?

A. To be a non-voting member.

Q. Does MCFL at the present time have someone who examines such statements that come in to the organization to see if they conform with this policy?

A. It's my understanding they do.

Q. Would the memberships that came about during 1973 to '78 through the forms and the—excuse me. I don't mean the forms. I'd like to rephrase that question.

Would the memberships that came in from '73 to '78 through the coupons, the signing of petitions, and the oral communications be qualified for membership under this standard in Exhibit D?

MR. FOX: You're asking for a legal conclusion? [48] MR. ANDERSEN: I'm just asking for his view.

MR. FOX: I object to the question.

A. I would ask Mr. Fox. I would ask legal counsel for an opinion on that.

Q. As far as the organization is concerned, not legally, but as far as the organization is concerned,

let me just take those one at a time. Would the petition signature pass muster under this?

MR. FOX: I object.

A. Again my answer would be the same. At the present time I would refer any question of that kind to legal counsel retained by Mass. Citizens for Life.

Q. Okay. Thank you. Again directing your attention to Exhibit D, Page 4, looking at the totals of membership from 1978 through 1982 and looking at the non-contributing columns in '78 and '79 and then the non-voting columns for '80, '81 and '82, would each of those totals include persons who became members of MCFL using the coupon form that we've discussed?

MR. FOX: I'm going to object on all the previous grounds I've mentioned.

Q. Let's start with just 1978.

MR. ANDERSEN: You wouldn't have an [49] objection to that, I take it.

MR. FOX: 1978 I would not have an objection to his being asked what he knows. If he's asked to speculate, I guess I would.

Q. Do you know whether in 1978 some portion of those non-contributing members became members through the coupon form?

A. I really don't know in 1978.

MR. FOX: That coupon was earlier, wasn't it?

MR. ANDERSEN: What I'm referring to really is a cumulative total. Perhaps I should phrase my question that way.

Q. I don't take it to mean that in each of these years MCFL established the total membership independent of each previous year. These are cumulative totals, are they not?

A. My answer would be that if a person became a member of Mass. Citizens by sending in a coupon

and then—and I'm not sure what year that was—and subsequently made a donation to the annual appeal, then my answer would be they would—well, I guess then they become a contributing member. If I had to guess, I'd say yes, but I really cannot [50] absolutely say yes.

MR. FOX: Well, I don't even know what question you're answering at this point, but I move to strike the answer. Don't guess at anything.

Q. Let me rephrase it. If a person became a member prior to 1978 through sending in a coupon and that person did not respond to the annual appeal letter, would that person be retained as a non-contributing member of MCFL during that 12-month period?

A. During that 12-month period, yes.

Q. What about during the period after the 12-month period?

A. I don't know at what point in time they were no longer considered a member.

MR. FOX: No longer considered a what?

THE WITNESS: A member.

Q. Who would be in a position to have that information: How long a person is kept on a mailing list without any communication back and forth from the organization?

A. The executive director would have that information.

MR. ANDERSEN: Let's take a short break.

[51] (Short recess)

Q. I'd like to direct your attention to Exhibit D which is the response to Commission interrogatories associated with this litigation. Page No. 13—actually starting on Page 12 concerning Interrogatory No. 18, and it has to do with newsletters that may be distrib-

uted to persons who do not pay dues specifically. The statement that I'd like to ask you about is on Page 13, answer to Interrogatory No. 18, and the statement is, under "a," "In order to inform all members of MCFL of the position of candidates for a variety of public offices on pro-life issues, at various times an edition of the MCFL newsletter is distributed to members of MCFL." And under subpart "b" of Answer No. 12 it says, "1975—1; 1978—1; 1980—1," and those are references to the question of how often this occurred during those years.

Now, do you find that that statement—do you agree with that statement?

A. I'm confused. Is this saying that this is the only time in the history of the organization that all members have received a newsletter?

Q. That's my understanding of it on those [52] three occasions in those three years.

MR. FOX: Just those three years, I believe. Which question is the basic question?

MR. ANDERSEN: The basic question is Interrogatory No. 17 on the top of Page 12.

Q. Maybe you can just review those and then when you've had a chance to look at them, we can go on.

A. My recollection is that there would have been an issue in 1974 also that went to every member, but again that's just my recollection.

Q. Were those issues in each of those years listed under "b" on Page 13 and to the best of your recollection in 1974, were those Election Editions for each of those years?

A. Yes. I would also—my recollection is that in 1978 there were at least two.



Q. That was in the Special Election Edition and the one that said November 7th Election Edition?

A. It is my recollection there was one for the primary and one for the general election.

Q. Okay. And this indicates that these would have been distributed to the largest category of members, including those persons who are [53] non-contributing.

A. Yes.

Q. Has MCFL distributed other editions to the entire membership as we've defined it for those years?

A. I don't recall whether they did or they didn't.

Q. But with the exception of those editions you mentioned in the MCFL response to Interrogatory 18, you feel that those are correct; that there was one edition in each of those years, with the exception of 1973 which had two?

A. To the best of my knowledge.

Q. Do you know whether during the election year distributions 1976, 1978, 1980, and possibly 1974, specific numbers of the editions were set aside for this distribution or was the distribution conducted all in one mailing?

A. I really don't know how it was distributed.

Q. Do you know whether MCFL works with its local chapters in distributing these materials or whether it's all central? Is that information that you would have? Again, this is for the period up to '78.

[54] A. My recollection was that it would be mailed, a copy would be mailed to the general membership, and then additional issues or copies of a newsletter would be given to chapter chairmen at chapter chairmen's meetings who in turn would distribute those to members of their chapters whose names would not necessarily be on the Mass. Citizens' membership list.

Q. So a person could be a member of a local chapter of MCFL but not necessarily a member of MCFL, Inc.?

A. Not a recorded member.

Q. Not a recorded member.

A. Yes.

Q. How many chapters are there? Local chapters.

A. Now?

Q. Well, let's say 1978.

A. Somewhere in the 80's. 80-odd chapters.

Q. And do chapters have a typical size or do they vary enormously?

A. They vary greatly.

Q. Are there some chapters that only have ten persons?

[55] MR. FOX: In 1978 we're talking about?

MR. ANDERSEN: Yes.

A. I would say there probably were some chapters that only had ten members, yes.

Q. Would in 1978 the number of members in a local chapter, could it have equaled 50?

A. Yes.

Q. Could it have equaled 100?

A. Yes.

Q. Could it have equaled 500?

A. It's possible.

Q. Does MCFL have a record of the membership, the number of members in its local chapters?

A. No. Not that I'm aware of.

Q. Does MCFL consider the local chapters to be affiliates of—

MR. FOX: Objection. Too vague.

Q. Let me try another avenue. What is the relationship between MCFL, Inc. and the local chapters?

MR. FOX: Objection. Too vague.



Q. Does MCFL, Inc. interact with the local chapters?

MR. FOX: Object to the form. Do you [56] understand that lousy question? If you do, try and answer it.

MR. NOBLE: Or any of the three previous questions to which there was an objection.

A. There was in 1978, and prior to that, there were regularly scheduled chapter chairmen's meetings, and there were—it was the duty, one of the duties of the executive director to interact with the chapters on a regular basis.

Q. And what would the interaction have amounted to? What was done?

A. He would be in communication with the chapter chairmen or designated people within the chapter.

Q. Would you be able to estimate the number of persons involved in the local chapters?

A. No.

Q. Would there be any record of the numbers, if not the actual existence of the persons, but would there be any way to identify the number of persons involved in MCFL local chapters?

A. At the chapter level perhaps, but not at the corporate level.

Q. Do you know whether in printing its [57] newsletter MCFL set aside a certain number of the newsletters to be distributed to the chapter chairmen, chapter presidents?

MR. FOX: Are you talking about 1978?

MR. ANDERSEN: Yes, we are talking about between 1973 and 1978.

A. Whatever the membership was, it was mailed to—the balance of those printed would be distributed through the chapter chairmen or through the chapters.

Q. In looking at the 56,000-some members that MCFL claims for 1978, does that include persons who might be members of a local chapter?

A. It could include some members who are members of the local chapters, yes.

Q. But not necessarily.

A. That's correct.

Q. So, in an MCFL printing of a newsletter would be some number printed that would be in addition to the membership in the MCFL corporate files that would be then distributed to the chapter presidents who then in turn would distribute them to the local chapter members?

A. Yes.

[58] MR. FOX: Object to the form.

MR. ANDERSEN: I'd like to ask the court reporter to mark as Exhibit H this document.

(Commission Moran Exhibit H marked for identification)

Q. I ask the witness to take a look at it. It is from the production of documents made to the Commission by MCFL, what purports to be all of Volume 5, Nos. 1 through 6, I believe, of the MCFL Newsletters, and in addition the November 7th Election 1978 and the Special Election Edition from September of 1978. I want to ask you if you are familiar with the volume and series numbering system that MCFL uses for its newsletters.

A. I'm familiar with it, yes.

Q. When does a given volume for a series of newsletters begin? When does a given volume begin? In what month of the year?

A. January, I believe.

Q. And it runs how long?

A. For a calendar year.

Q. I direct your attention to the first volume 5, No. 4, which is about midway through. It looks like so (indicating). It's dated July-August 1977. [59] Then the next newsletter is Volume 5, No. 5, but it's dated February 1978. Why would it not start a new volume?

A. I don't know.

Q. And then if we look at the next number in the series, it is Volume 5, No. 6 dated May 1978. Are these numbers 5 and 6 part of the same Volume 5 in 1977?

A. From what I observe here, yes.

Q. I'd like to direct your attention now to the Special Election Edition, and it states in the upper left-hand corner "Volume 5, No. 3, 1978." Is this part of Volume 5?

A. You've got me. It says it's Volume 5, but I don't know who put that in. It's not printed. It's hand done. I don't know.

Q. Thank you. Are the newsletters printed on 8½ by 11 or legal size sheets?

A. The newsletters varied in size to my recollection.

Q. Some of them may have been oversized and they may have been on paper that was larger than what we have in our copies; is that correct?

A. That's my recollection.

[60] MR. ANDERSEN: This document purports to be Special Election Edition dated September 1974. I'd ask the court reporter to mark it as Commission Exhibit I.

(Commission Moran Exhibit I marked for identification)

Q. I hand it to the witness. Do you recognize this Special Election Edition as one of the documents that

was distributed to all members, including the non-contributing members, in 1974?

A. That's my recollection.

MR. ANDERSEN: I have here a Primary Election Edition dated August 1976. I'd like to ask the court reporter to mark this as Commission Exhibit J.

(Commission Moran Exhibit J marked for identification)

Q. I ask the witness to look at that, please. Do you recognize that Primary Election Edition as being one that was distributed to the non-contributing members?

A. Yes.

MR. ANDERSEN: I have here a document that's entitled "PRIMARY ELECTION 1980" and I'd like [61] to hand this to the court reporter for marking as Exhibit K.

(Commission Moran Exhibit K marked for identification)

Q. Have you had a chance to take a look at it?

A. Yes.

Q. Was Exhibit K distributed to non-contributing members?

MR. FOX: Objection, obviously on the previous grounds because this is a 1980 document. Also the terminology might be different.

Q. Had the terminology changed at this point where the new articles of organization were in effect at this time?

A. Yes.

Q. So this then would have been distributed to non-voting members as well as the other groups or other categories of members; is that correct?



A. Yes.

MR. FOX: No. Are you speculating or are you telling him you know? Just for my curiosity.

THE WITNESS: My belief is it was distributed to voting members and non-voting members as well as dues-paying members. I have no idea [62] whether it was distributed to the fourth category which I had never heard of until this morning.

MR. FOX: What's that?

THE WITNESS: There's a fourth category in the interrogatories. Non-contributing?

Q. I think that we already have marked as an exhibit a copy of the fourth Special Election Edition that I would like to ask you about. Let me just make sure. Yes. It's in Volume 5. It's Exhibit F. I direct your attention to Exhibit F and ask you to find the November 7th Election Edition. That may have been marked twice. Do you recognize this document as one that was distributed to non-contributing as well as contributing members of MCFL in 1978?

A. That's my recollection.

Q. Directing your attention to Exhibit A, which is your affidavit, Paragraph No. 14, which is on Page 5 of Exhibit A, states in essence that in addition to carrying on several functions mentioned, MCFL promoted the flow of information on pro-life issues by distributing pro-life literature. In 1978 it distributed many pieces of literature on pro-life issues in addition to, as it seems the sense of it [63] is, the newsletters; is that correct?

A. Yes.

Q. What kind of literature in addition to the newsletters did MCFL distribute? Have we seen some in looking through the documents?

A. Exhibit E would be an example. In addition, there would be numerous books, duplication of pro-

life newspaper articles, a number of pro-life books, articles, publications. Just a lot of information.

Q. Would these have been distributed to the general public?

A. To the members and to the general public.

Q. Directing your attention to Exhibit A, No. 17, Paragraph No. 17, the last half of that paragraph is the statement that, "Central to its political activities was the effort to educate its members through newsletters reporting on a candidate's voting record or his responses to questions on pro-life issues." In addition, referring to Exhibit F that we were just looking at, and drawing your specific attention to the Special Election Edition, there is a disclaimer that any particular candidate is endorsed by MCFL; is that [64] correct?

A. That is correct. On Page 8 there was a disclaimer.

Q. Do you think that the Special Election Edition fairly presents the position of a candidate discussed in the edition with respect to abortion issues?

A. To the best of my knowledge it does.

\*Q. Would you say that the Special Election Edition informs the reader whether the identified candidate has a pro-life stance on abortion issues?

THE WITNESS: Could you reread that question?

\*(Record read)

A. I believe it informs the reader of the stance of all of the individuals whether they be pro-life or pro-abortion.

Q. It informs the reader of their positions on abortion.

A. Yes.



Q. If a candidate is identified as being pro-life, what does that mean to you?

A. To me personally?

Q. Yes.

[65] A. It means that in this particular instance that they answered the questions that were submitted to them if they were not an elected official with a yes vote or a yes answer whether or not they would support certain positions requested or asked of them, and if they were an elected official, it would indicate their position on certain votes that had been recorded whether in the House of Representatives or the Senate.

\*Q. When MCFL prints on this election edition "Vote Pro-Life," does MCFL encourage the reader to vote for those candidates who are identified on those issues discussed in the edition as being pro-life in their stance?

MR. FOX: I'll object. Calls for a legal conclusion. The document speaks for itself. His opinion is irrelevant. Anyone's comment is irrelevant. I construe the question as asking for his personal opinion. If you mean for it to be so, go ahead and answer if you have a personal opinion.

Q. I would ask you your personal opinion.

MR. FOX: I still object on all the mentioned grounds. You can answer. What's the question?

[66] \*(Record read)

A. My belief is that this particular edition educates or informs the membership as to how certain candidates voted as elected officials prior to this on abortion-related issues and/or answered questions submitted to them for the purpose that it would be my personal hope that being so informed and so educated, that the person would vote pro-life.

Q. Would your opinion be the same as a director of MCFL?

MR. FOX: Object to the form.

A. I was a director of MCFL and still am.

Q. Is your opinion speaking as a director of MCFL the same as you just announced?

MR. FOX: I don't understand the question, but he may answer if he understands it.

Q. Do you understand the question?

A. Clarify it, please.

Q. I asked you a question, and after discussion with counsel, asked you for your personal view, and I believe that's what you gave. And now I am asking you for your view as a director of MCFL if it is the same as your personal view or if it is different.

[67] MR. FOX: I'm objecting on all the other grounds. In addition, I don't understand what the difference is. I'm telling the witness he can answer if he understands.

A. I don't understand where I would be different as an individual or as a director, so my answer would stand.

MR. FOX: I guess he doesn't have two opinions once he puts on a director's hat.

MR. NOBLE: That is the question. Some people do take one position in an official role and another position in a personal role.

Q. I'd like to go back to a question about the board of directors, and we're speaking of between 1973 and 1978. During that period of time, did the board of directors have meetings?

A. Yes.

Q. How often were those meetings?

A. Initially they were monthly. At some point in time I believe we went to a quarterly and then we reverted back to monthly again.

Q. Are minutes of those meetings kept?

A. Yes.

Q. One other area I wanted to ask you about [68] was I asked you a few questions about the local chapter and the distribution of the newsletters to the local chapters. I'm just not clear on it, and if we say in 1978 that according to the affidavits and so on that 56,000 issues of a special edition went out to the membership, does that include—does that number of 56,000 include copies that were made available to chapter presidents?

A. No.

Q. So those would be additional—there would be an additional number of copies printed above 56,000 to take care of those distributed to members of the local chapter.

A. Yes.

Q. Do you know what that additional number would have been for the Special Election Edition?

A. From what I have read, it's a hundred thousand.

Q. Pardon?

A. The total number of Special Election Edition's was 100,000 printed.

MR. ANDERSEN: That's all. No further questions.

[1] UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

Misc. Action No. 82-0609-G

FEDERAL ELECTION COMMISSION, PLAINTIFF,

v.

MASSACHUSETTS CITIZENS FOR LIFE, INC., DEFENDANT.

DEPOSITION of MARIANNE REA-LUTHIN, a witness called on behalf of the Plaintiff, taken pursuant to the Federal Rules of Civil Procedure, before Ralph J. Simpson, Registered Professional Reporter and Notary Public in and for the Commonwealth of Massachusetts, at the U.S. Customs House Courtroom, 13th Floor, No. 2 India Street, Boston, Massachusetts, on Thursday, August, 1982, commencing at 9:10 a.m.

PRESENT:

R. Lee Andersen, Esq. and Lawrence M. Noble, Esq., Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20460, for the Plaintiff.

Bingham, Dana & Gould (by Francis H. Fox, Esq.), 100 Federal Street, Boston, Massachusetts 02110, for the Defendant.

. . . . .

[8] of 1978.

Q. Are any of those positions paid positions?

A. The legislative aide and the executive director position were paid positions. Before and since that

time I have served solely on a voluntary basis with no payment.

Q. The president's job is a voluntary position?

A. Yes.

Q. Are you familiar with an organization called the Massachusetts Citizens for Life Political Action Committee?

A. Yes.

Q. I'll refer to that as MCFL PAC. Do you have a position with the MCFL PAC?

A. Yes, de facto. I believe the correct title is chairman. The president is automatically the chairman of that.

Q. When did you first become involved with MCFL PAC?

A. I don't recall the exact date that PAC was established. I believe it was sometime in 1980.

Q. Have you been involved in the PAC since its formation?

A. Yes.

[9] Q. Did you help to form the PAC?

A. I don't know exactly what you mean by that.

Q. Did you assist in organizational efforts?

A. I was—I'm trying to recall. I can't remember the exact date, so if I was president, I would have automatically been on. If I had not been at that time, I must have been appointed. I just can't recall the exact dates.

Q. Would it be fair to say it was shortly after the organization was formed at the very least?

A. Yes.

Q. Thank you.

MR. ANDERSEN: I have a document here that's described as the "AFFIDAVIT OF MARIANNE REA-LUTHIN." It has attached to it a Special Elec-

tion Edition of a newsletter. It has, I think, two newsletters attached to it. It has a candidate questionnaire, several candidate questionnaires attached to it. I'd like the court reporter to mark this as Commission Exhibit A.

(Commission Rea-Luthin Exhibit A marked for identification)

Q. I'm handing this to the witness. Would you please review this. I guess this is two copies here.

[10] MR. FOX: I think that is a special corrective four-page edition that came out after the earlier one.

Q. If you'll look on what appears to be the second copy of the edition, it says in a small box toward the lower left "Complimentary Partial Copy." I think that distinguishes it from the other.

Can I direct your attention to Page 8 of the affidavit itself. Is that your signature?

A. Yes, it is.

Q. Do you recognize this affidavit and its attachments?

A. Yes.

Q. Did you prepare this affidavit?

MR. FOX: I think I must have prepared it.

A. Someone in the law office wrote the original draft and then I reviewed it and made what I felt were corrections or additions.

Q. Thank you. I would like to direct your attention to Page 1, the paragraph numbered 2. There is a statement there that you had final responsibility for the content and layout of the editions that are attached.

A. Yes. I was the editor for the Special [11] Election Edition. I am a little unclear what that second attachment is.



Q. For purposes of our discussion right now, let's just consider the first.

A. The Special Election Edition dated Volume 5 No. 3?

Q. Yes.

A. Yes, I was the editor for that particular edition.

Q. Did you also have responsibility for the circulation of the edition?

A. To some extent.

Q. Did you share this responsibility with someone else?

A. Could you be a little bit more specific?

Q. Would you have been responsible for the size of the circulation, the number of copies?

A. Essentially. I did call the printers to get estimates of the prices and did make the final decision after consulting the president of the organization.

Q. And how would you determine—how did you determine for the Election Edition the size of the circulation, the size of the printing?

[12] A. I did a rough count of the number of members' names who were contained in our files and I then—we also would normally distribute copies of the newsletter to our chapter chairmen who would have members in their files that we would not necessarily have in the state office, so I just took a reasonable guess; also based on the amount of money the organization had at the time.

Q. The printing of the Election Edition that you have in front of you was larger than the typical newsletter printing; is that not correct?

A. Yes.

Q. During the period of 1978, what was the approximately the typical circulation of the newsletter?

A. I couldn't give you an exact figure. This is the only newsletter for which I was the editor. There had been a change in staff, so I was not directly responsible for that. I believe it's contained in one of the affidavits.

Q. You were the editor then for the Election Edition, Special Election Edition only?

A. Yes. As I said, there had been a change in staff and I was the only one employed full time.

[13] Q. Did you then continue to edit subsequent—

A. No.

Q. Did you continue to edit the MCFL Newsletter?

A. No. I left the organization on a paid basis, as I mentioned, somewhere either the end of September or beginning of October of '78.

Q. When you acted as editor of the Election Edition, were you a paid staff member?

A. Yes.

Q. Is this the only Election Edition that you ever edited?

A. In 1976 I did work on the questionnaires. I did not edit the paper.

Q. You mentioned questionnaires. Could you be more specific in describing those questionnaires? What kinds of questionnaires were they?

A. The same as what's attached to this exhibit.

Q. In going through the files that you mentioned to determine who would receive copies of the Election Edition, the 1978 Election Edition, was the file divided into different groups of persons, different categories of persons that received communications from MCFL?

[14] A. The file was divided into zip code order because that's the way the mailing had to be done.

Q. Approximately 57,000 of the Special Election Editions were distributed; is that correct?

A. Yes.

Q. Why was this distribution so much larger than, say, the newsletter that was distributed just previous to the Election Edition?

A. Financial considerations.

Q. Were financial considerations the only consideration?

A. Basically we would like to have every newsletter go out to every member at every time. It's just not financially possible.

Q. Did you ever send newsletters—I'm not talking about the Special Election Edition, but newsletters to, say, half of the number of persons who received the Election Edition?

MR. FOX: I think the question is ambiguous about "you." I think she testified she only was editor of one edition. She may have knowledge or observations as to what was done by others, but if I'm right, she said she only edited this one edition.

Q. Are you familiar with the printing and [15] circulation—let me ask you if you are familiar with the size of the printing of other MCFL newsletters.

A. Not specifically.

Q. Do you know whether the distribution of the Special Election Edition was larger than the typical MCFL distribution of newsletters?

A. I believe it is, because I know that we would not have the money to mail out to the entire membership on every newsletter.

Q. Are you familiar with the membership categorizations that MCFL used in 1978?

A. Yes.

Q. Would you please state for the record what those categories were?

A. Well, there were actually three, two of which are refinements of a paid membership category. We had two kinds of membership where people would actually donate money. Dues-paying members would contribute \$15 or more. Contributing members would contribute less than \$15, and then we had a general membership composed of anyone who had affirmed in some way the statement of purpose of MCFL.

Q. Were the three categories of members [16] tallied on separate mailing lists?

A. At that time in 1978 there was a separate file kept just of contributors, and then all of those names were integrated with the general membership file so that there was one file in the office that had everyone's name, and there was a separate file with contributors' names and the amounts they had given.

Q. You did not make a distinction then between the dues-paying and contributing members for purposes of your mailing list; is that correct?

A. Every person who contributed, that person's name would be on a card with the amount they had given, so it could change during the year. If someone had contributed \$10 and then sent in \$5, that would be noted on the card.

Q. At the time of the 1978 Election Edition, did you use a computer-controlled mailing list?

A. No.

Q. How did you handle the labeling and organization of the newsletters?

MR. FOX: Again, I'll object. I think she should be asked only about this one where she was the editor. [17] Q. Let me rephrase it and ask you how the physical organization and distribution of the Election Edition occurred.

A. Each member's name and address was typed on what is called an Elliott card, and those cards



were filed in zip code order. The cards would be taken to the mailing house, and I'm not exactly sure what the process is called, but somehow the cards would be run through the machine and a picture of the name and address taken and placed on a label or directly on the piece. I don't recall exactly what the mechanical procedure was.

Q. Do you have—

A. There was physically a card there with a name and address for each member.

Q. Do you have knowledge as to how the regular newsletter was distributed?

A. That changed over the years. Originally they were hand addressed. At that particular point I don't know whether that had been mechanized or not.

Q. The Special Election Edition was not hand addressed; is that correct?

A. Not in 1978.

Q. Do you know how the MCFL newsletters are [18] referred to? Do you know how they're systemized?

MR. FOX: Object to the question. I don't understand it.

Q. Do you know how the volume and specific issues are labeled? Let me rephrase it. If you will look at the attachment in the Election Edition, at the top left it says "Volume 5, No. 3, 1978." To what does that volume and number refer?

A. I assume—and I really can't speak with authority because I didn't work on the other newsletters—I assume it was the third edition of the newsletter for that year.

Q. Let's just refer then to this one that we have in front of us and not refer to the other one right now. Did you write "Volume 5, No. 3, 1978" on this Election Edition?

A. That is not my handwriting.

Q. Do you know how the designation "Volume 5, No. 3" appeared on the Election Edition?

A. No.

Q. Do you recall whether "Volume 5, No. 3" was on the Special Election Edition at the time you took the original copies to the printer?

A. I really wouldn't recall.

[19] Q. Do you know if each of these "Volume 5, No. 3" designations were written on the Special Election Edition by hand after the printing?

A. I don't know where that came from.

Q. Do you have knowledge of the volume and series number with respect to other Special Election Editions that MCFL may have prepared and distributed in the past?

MR. FOX: Object to the form.

Q. Let me try to rephrase it. Do you have knowledge of the volume and series designation with respect to MCFL newsletters?

A. To tell you the truth, I never gave it any thought.

MR. ANDERSEN: I have here what purports to be Volume 5, Nos. 1 through 6 of the MCFL Newsletters, and in addition the November 7th Election 1978 Edition dated October 11, 1978, and the Special Election Edition designated Volume 5, No. 3, 1978. Handing this to the court reporter, I'd like to have this marked as Commission Exhibit B.

(Commission Rea-Luthin Exhibit B marked for identification)

Q. I'm handing this to the witness. I'd like [20] you to take a look at those and see if you have seen them before or are familiar with them. Do you recognize these?



A. Yes.

Q. You'll notice that Volume 5 consists of Nos. 1 through 6. If you look through them all, that's the way they are numbered. Does looking at the volume and numbers of the newsletters in Exhibit B refresh your recollection as to how the newsletters are numbered?

A. I can read the way they're numbered.

Q. Does it refresh your recollection as to the system used by MCFL to number its newsletters?

A. I was never involved in numbering newsletters.

Q. Okay. Thank you. Mrs. Luthin, you stated earlier that you were not involved with any of the other election editions; is that correct?

A. I don't believe I said that. I was not the editor of any other election newsletter. I did work on the process of integrating the questionnaires that had been returned on the 1976 newsletter, but I was not responsible for the format or the content of the final product.

[21] Q. Were you involved with the distribution of the other election editions?

A. I don't specifically recall.

Q. Do you have knowledge as to who of your members, of those persons that MCFL claims as members, would have received the earlier Election Editions?

A. I assume that every member received one.

Q. When you say "every member," do you mean to include the three categories you mentioned?

A. Yes.

Q. But it wasn't ordinary for MCFL to distribute newsletters to all members of all three categories, was it?

A. I was not involved with the newsletter. I don't know what occasions on which every member received a newsletter.

MR. ANDERSEN: I have here what purports to be a copy of a Special Election Edition dated September 1974. I'd like to have this marked as Exhibit C.

(Commission Rea-Luthin Exhibit C marked for identification)

Q. Handing this to the witness, Exhibit C, [22] take a quick look at that and tell me if you recognize it.

A. Yes.

Q. Were you involved in the process of preparing this Special Election Edition, Exhibit C?

A. No, sir.

Q. Thank you.

MR. ANDERSEN: I have here what purports to be a Primary Election Edition dated August 1976. I'm handing this to the court reporter to be marked as Exhibit D.

(Commission Rea-Luthin Exhibit D marked for identification)

Q. I'm handing Exhibit D to the witness. Would you please review that.

MR. ANDERSEN: Off the record.

(Discussion off the record)

MR. ANDERSEN: I went off the record to tell Mr. Fox some information concerning the number of copies of these exhibits that we have.

Q. Are you familiar with this document?

A. Yes.

Q. Exhibit D?

A. Yes, sir.

[23] Q. Were you involved in any aspect of the preparation of Exhibit D?

A. Yes. As I recall, I sent out the questionnaires to the state candidates listed.

Q. Do you know whether all three categories of members of MCFL received this edition, Exhibit D?

A. I would assume so. I wasn't directly involved in it, but I would assume so.

Q. Do you recall how many copies were printed?

A. No.

Q. Do you have any knowledge whatsoever as to even the approximate number?

A. No.

MR. ANDERSEN: I'd like to refer you now to Exhibit B and approximately three quarters of the way through the exhibit is a copy of the November 7th Election 1978 Election dated October 11, 1978. Were you involved in the preparation of this November 7th Edition?

A. Not directly. I had left the organization by that time. I did not put this together, although the results from the questionnaires appear to be a condensation of what had been done in the previous edition which I did edit.

[24] Q. Do you have any knowledge concerning the number of copies of this Election 1978 Edition?

A. No.

Q. I'd like to direct your attention again to Exhibit A and specifically to your affidavit, Paragraph No. 9 on Page 4. The section I wish to refer you to is the sentence that states, "The publication of the position of the candidates was intended as an educational service for concerned voters, not as an endorsement of particular candidates." Do you agree with that statement?

A. Yes.

Q. Now I'd like to refer you to the Special Election in Exhibit A. Does this Election Edition fairly represent the positions of the candidates referred to on the abortion issues that the edition discusses?

A. I believe it does.

Q. Does this Election Edition identify the candidates discussed with respect to their position on abortion issues?

A. It states the position of the candidates, yes.

\*Q. Does this Election Edition identify [25] candidates as being pro-life?

MR. FOX: Objection. The document speaks for itself. Also on relevance grounds. Her opinion of what it does is irrelevant.

MR. ANDERSEN: Well, I disagree. I think that the statement by her of her own personal opinion that the Election Edition was not an endorsement of candidates is at issue in this case, and that's the foundation that I'm trying to lay by asking these questions.

MR. FOX: I'll allow you to inquire. I'm objecting on the grounds of relevance and that it does speak for itself, but read the question back. Maybe she can answer it.

\*(Record read)

A. This Special Election Edition contains the position of the candidates on the pro-life issue.

Q. Does MCFL wish to encourage voters to vote for pro-life candidates?

MR. FOX: I'll object on relevance. The question is ambiguous as to time, and also I think she should be asked about what her observations are. I don't think she has been empowered to speak for MCFL on the matter of desire. If you're asking her [26] personal



opinion as to what MCFL would like or wouldn't like, go ahead and ask it.

\*Q. Is it your opinion that the Election Edition marked as Exhibit A encourages the reader to vote for candidates whose position on pro-life is that of being against abortion?

MR. FOX: I certainly object on relevance and on the document speaking for itself, but she may answer.

A. Could you just repeat the question?

\*(Record read)

A. I believe the newsletter gives information to people concerning the positions of candidates on the pro-life issue.

Q. What does "vote pro-life" mean to you, Mrs. Luthin?

A. In what context?

Q. What do the words "vote pro-life"—let me refer you to the bottom right-hand corner of the Election Edition that we're looking at. It says, "vote pro-life on September 19; and encourage your friends and neighbors to do the same." That is the context that I'm referring to.

A. Well, that particular statement is taken [27] within the context of a larger article within the newsletter which encourages people to read the information that's contained in the newsletter.

Q. Which article is that that you're referring to?

A. The text you're quoting from reads, "If you care about the unborn, please read the enclosed information, fill in your choices on the blank ballot on the back page," and then it says to "vote pro-life on September 19."

\*Q. At the risk of repeating myself, can I ask you again, please, to answer the question. What do the words "vote pro-life" mean to you?

MR. FOX: Of course I object on relevance, best evidence. It speaks for itself.

MR. ANDERSEN: Mr. Fox, are you now acting as Mrs. Luthin's lawyer at this point? Are you now representing Mrs. Luthin?

MR. FOX. Does she need representation? You tell me. If she does, I'll do it.

MR. ANDERSEN: I'm simply asking you since you're making objection.

MR. FOX: I'm here representing the defendant in the lawsuit you brought. I thought [28] that would be apparent.

MR. ANDERSEN: Yes.

MR. FOX: If there is any ambiguity, I will try to relieve the ambiguity in your mind.

MR. ANDERSEN: Could you repeat the last question?

\*(Record read)

A. Could I just ask if you mean in the content of this newsletter?

Q. No. I'm asking you what the words mean to you. We discussed it in the context of this newsletter and you made your response. I'm simply asking now—

A. In general?

Q. In general. Personal view.

A. My personal understanding of what it would mean to vote pro-life would be to study the positions of various candidates at different levels of government on their position on the life issues and to take



those positions into account when deciding which candidates to vote for.

Q. You're saying then that the statement does not encourage a person to vote pro-life, but rather just to consider the issues. Is that your—

[29] MR. FOX: Object to the form.

Q. Are you saying that the statement "vote pro-life" does not encourage a person to make a vote for those candidates—

A. I don't think I said that. What I said was that people need some basis on which to make their decisions, and obviously a person couldn't vote pro-life unless they knew what the position of a candidate was on that issue.

Q. Okay. Thank you.

MR. ANDERSEN: I'd like to take a short recess.

(Short recess)

MR. ANDERSEN: Back on the record.

Q. I'd like to return to the area of membership that you testified about earlier. I'd like to ask you the question, once a person has contributed to MCFL, how often do they have to keep contributing in order to maintain their status as a contributing member?

A. Membership is based on a yearly basis.

Q. So once a person makes a contribution, they have twelve months within which to make another contribution in order to maintain membership; is [30] that correct?

A. Yes.

Q. How much money would a person have to contribute in order to maintain their membership? Let's take each category. Let's take first the dues-paying.

A. Are you talking about 1978?

Q. Yes. I'm sorry. Referring to 1978.

A. I believe that at that time the dues-paying member was \$15. That \$15 contribution entitled a member to also receive the National Right to Life News, so that was the cutoff point, \$15, and contributing members would be anyone who contributed less than \$15.

Q. What would be the minimum that MCFL would have accepted at that time?

A. We would accept any amount.

Q. A dollar?

A. Sure.

Q. The contributing member, his or her membership, even if they wanted to only contribute even \$1, would be a twelve-month membership; is that correct?

A. Yes.

[31] Q. The policy that you just outlined for 1978, was this an official policy of MCFL?

A. I had always understood it to be. I don't know whether there was an official vote taken by the board.

Q. Was this policy written down anywhere?

A. Yes. It would have been detailed in the annual appeal letter that did go out to members.

Q. Did the annual appeal letter go to all three categories of members?

A. Yes.

Q. And this is where the policy outline would have been written down.

A. Yes. I'm a little bit hazy on the dates. As I explained, at some point we sent the National Right to Life News out, and I don't know the exact years in which that was done, but I believe that was still in existence at that time.

Q. Did the National Right to Life Committee send you copies of their newsletter each month?

A. We received them on a bulk mail basis and we would send them.

Q. You would then distribute them to your contributing members.

[32] A. Yes.

Q. Dues-paying members?

A. I'm sorry. Dues-paying.

Q. Did you pay for the National Right to Life Newsletters?

A. Yes.

Q. And how much would you have paid in 1978?

A. I really don't recall. We did it on a bulk basis because it was cheaper than sending the subscriptions and saved bookkeeping. I really wasn't involved directly in that kind of office work for very long. I'm a little bit hazy, but that is my general recollection.

Q. Do you, Mrs. Luthin, know whether MCFL has given the Commission a copy of their annual appeal letter?

MR. FOX: What is the annual appeal letter?

MR. ANDERSEN: We were just discussing it. I'm not sure I know.

A. That is the letter which is sent out to all members usually in January. I believe I did see a copy of it in one of the attachments.

MR. ANDERSEN: Towards the back of the MCFL document production we have several letters. Maybe [33] it would be easier—could we ask MCFL to see if we have that appeal letter in our production, and if we don't, request that?

MR. FOX: That's an annual appeal reminder. There's something that would precede that. I'll check that.

MR. ANDERSEN: If you could check. If we do have a copy, fine. If not, perhaps you could make one available. I have no further questions.

MR. FOX: No questions.

(Whereupon, at 10:25 a.m., the deposition was concluded)

UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF MASSACHUSETTS

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Civil Action No. 82-0609-G

FEDERAL ELECTION COMMISSION, PLAINTIFF,

v.

MASSACHUSETTS CITIZENS FOR LIFE, INC., DEFENDANT.

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**ANSWERS AND OBJECTIONS OF MASSACHUSETTS  
CITIZENS FOR LIFE, INC. TO SECOND SET OF  
INTERROGATORIES PROPOUNDED BY  
FEDERAL ELECTION COMMISSION**

Massachusetts Citizens for Life, Inc. ("MCFL") answers the Second Set of Interrogatories propounded by the Federal Election Commission ("FEC") pursuant to Fed. R. Civ. P. 33 as follows:

*INTERROGATORY NO. 1*

For the period 1973 through 1978, MCFL has claimed three classifications of members, dues paying, contributing and non-contributing. For the year 1978, MCFL has stated that the number of its members was approximately 55,822 members.

- a. During the period 1973 through 1978, did MCFL drop from its membership rolls any persons whom it no longer considered to be members?

- b. If the answer to part a. is yes, please answer the following questions:
- 1) How many persons were dropped from MCFL's membership rolls for each year from 1973 through 1978?
  - 2) What criteria were used by MCFL to select persons to be dropped from MCFL's membership rolls for each year from 1973 to 1978? Were these criteria memorialized in written form?
- c. If a person was accepted by MCFL as a non-contributing member, how long was this person retained as a non-contributing member if he or she failed to respond to a subsequent annual appeal letter?
- d. If a person was accepted by MCFL as a non-contributing member, how long was this person retained as a non-contributing member if he or she did not thereafter communicate in any way with MCFL?
- e. Did persons classified as dues paying members automatically become a non-contributing members [sic] after the expiration of twelve months without their making any payment of money to MCFL?
- 1) If the answer to part e. is no, did persons classified as dues paying members automatically become contributing members after the expiration of twelve months without their making any payment of money to MCFL?
  - 2) If the answer to part 1) is no, were such persons retained as dues paying members?



- 3) If the answer to part 2) is yes, how long were such persons retained as dues paying members without receipt of any payment by MCFL?
- f. Did persons classified as contributing members automatically become non-contributing members after the expiration of twelve months without their making any payment of money to MCFL?
  - 1) If the answer to part f. is yes, were members given notice of this change in membership classification?
  - 2) If the answer to part f. is no, how long after the expiration of twelve months without making any payment of money to MCFL would such persons continue to be considered contributing members?
- g. For each year from 1973 through 1978, how many new members were entered into MCFL's membership rolls for each of the three classifications of membership claimed by MCFL during this period of time?

#### OBJECTION TO INTERROGATORY NO. 1

MCFL objects to Interrogatory No. 1 on the ground that it seeks information which is not relevant to the subject matter involved in this action.

#### ANSWER TO INTERROGATORY NO. 1

Without waiving its objection, MCFL answers this interrogatory as follows:

- a. During the period 1973 through 1978, MCFL had no fixed procedures or policies for deter-

mining the length of time a person would be retained as a member. MCFL has no records which indicate whether and when persons were dropped from its membership list during that period. However, based on reasonable efforts to ascertain the procedures followed by MCFL prior to 1978, it would appear that most persons who became members subsequent to 1973 were retained on the membership list through 1978 unless they had (i) moved and left no forwarding address, (ii) requested that their name be removed from the membership list, or (iii) died.

- b. 1) MCFL does not have records which would indicate the number of persons dropped from its membership list between 1973 and 1978.
- 2) See a., *supra*; MCFL had no written criteria for removing names from its membership list.
- c. See a., *supra*.
- d. See a., *supra*.
- e. No.
  - 1) Yes.
  - 2) N/A.
  - 3) N/A.
- f. No.
  - 1) N/A.
  - 2) During the period in which MCFL had "contributing" and "non-contributing" mem-

bers, MCFL had no fixed procedures or policies regarding the length of time that a contributing member would be considered as such if he or she did not make a payment of money to MCFL within twelve months of his or her last contribution. However, based on reasonable efforts to ascertain the procedures followed by MCFL prior to 1978, it would appear that on an irregular basis such persons would be removed from the list of contributing members.

- g. MCFL has no records which indicate the number of new members who were entered into MCFL's membership list for each of the three classifications of membership which MCFL had between 1973 and 1978.

#### *INTERROGATORY NO. 2*

During years 1973 through 1978 did MCFL make any filing with the Internal Revenue Service under 26 I.R.C. § 501(c)(4) (1982)?

- a. If the answer to Interrogatory No. 2 is yes, please respond to the following:
- 1) In which years did MCFL file under Section 501(c)(4)?
  - 2) What was the name of the person who prepared the filing for MCFL?
  - 3) If in any particular year from 1973 through 1978 a filing under Section 501(c)(4) was not made, please state why such a filing was not made for that year or years.

#### *OBJECTION TO INTERROGATORY NO. 2*

MCFL objects to Interrogatory No. 2 on the ground that it seeks information which is not relevant to the subject matter involved in this action.

#### *ANSWER TO INTERROGATORY NO. 2*

Without waiving its objection, MCFL answers this interrogatory as follows:

No.

a. N/A

#### *INTERROGATORY NO. 3*

In MCFL's May 6, 1982 Answers and Objections to the Federal Election Commission's First Set of Interrogatories (Answer to Interrogatory No. 18b.), MCFL stated that on one occasion during each of the years 1976 and 1978 MCFL distributed what is claimed to be an edition of the MCFL newsletter to all those persons considered by MCFL to be members. Please identify these materials by the title, date, volume and number that appeared upon them.

#### *ANSWER TO INTERROGATORY NO. 3*

1976—Title: Massachusetts Citizens For Life  
Newsletter—Primary Election Edition

Date: August, 1976

Volume and Number: Volume 4, Number 6

1978—Title: Massachusetts Citizens For Life Special Election Edition

Date: September, 1978

Volume and Number: Volume 5, Number 3

I, Henry C. Luthin, hereby certify that I have read the foregoing Answers and Objections of Massachusetts Citizens for Life, Inc. to Second Set of Interrogatories Propounded by Federal Election Commission and to the best of my knowledge, information and belief, I believe them to be true.

Signed under the pains and penalties of perjury.

/s/ Henry C. Luthin  
HENRY C. LUTHIN

DATED: September 17, 1982

Pursuant to Fed. R. Civ. P. 33(a), I, Jeffrey R. Martin, hereby certify that I am the attorney who made the foregoing objections.

/s/ Jeffrey R. Martin  
JEFFREY R. MARTIN  
BINGHAM, DANA & GOULD  
100 Federal Street  
Boston, MA 02110  
(617) 357-9300

[Certificate of Service Omitted in Printing]

MASSACHUSETTS CITIZENS FOR LIFE, INC.  
MUR 957

*Answers to Interrogatories*

1. Is the Massachusetts Citizens for Life incorporated?  
A. Yes.  
Is MCFL incorporated for purposes of liability only?  
A. Liability was a major reason for incorporation. There were others, however, such as permanency and tax considerations.
2. Please submit MCFL's articles of incorporation, constitution and by-laws.  
A. Articles of Incorporation and By-laws are attached. MCFL has no "constitution".
3. Is MCFL a membership organization?  
A. Yes.
4. Does MCFL conduct political activities in connection with federal elections?  
A. No. MCFL is a non-partisan organization which disseminates the voting records of incumbents and views of non-incumbent candidates on issues of concern to the pro-life movement. MCFL urges its members to vote.
5. Does MCFL support candidates for federal office?  
A. No. MCFL endorses no candidates for federal office. It does urge members to vote pro-life.



6. Does MCFL print and distribute a tabloid or other communication which discusses or endorses candidates for federal office?

A. MCFL endorses no candidates for federal office. MCFL does print a newspaper in tabloid form which, on occasion, among other matters discusses candidates for federal office.

7. Please submit a copy of each tabloid distributed by MCFL during 1978.

A. Copies of each newspaper or newsletter distributed by MCFL from its statewide office in 1978 are attached with the exception of the "Complimentary Partial Copy" of the Special Election Edition, as to which no copy can be located. The FEC already has a copy of that edition.

8. Does MCFL pay all expenses for the preparation, printing and distribution of these tabloids? What was the total cost to MCFL in connection with these tabloids during 1978? Please submit documentation in this regard (paid bills, cancelled checks, etc.).

A. Yes. The total cost to MCFL in connection with the newsletters distributed in 1978 was approximately \$12,625.16, broken down as follows:

*February, 1978*

Prepared by staff	\$ 150.00 (approx.)
Printing:	
Newton Corner Press	730.80
Mailing and Postage	148.21
	<hr/>
	\$1,029.01

*May, 1978*

Prepared by volunteer	\$ 0
Printing:	
Newton Corner Press	341.25
Mailing and Postage	177.16
Watson Mailing Service	45.00
	<hr/>
	\$ 563.41

*Special Election Edition*

Preparation by staff	\$ 475.00 (approx.)
Printing:	
National Press Corp.	2,113.75
Mailing:	
Watson Mailing Service	1,967.90
Postage	4,874.11
	<hr/>
	\$9,420.76

*Special Election Edition,  
Complimentary Partial Copy*

Preparation	\$ 0
Printing	392.00
Mailing	0
	<hr/>
	\$ 392.00

*October, 1978*

Preparation done by volunteer	\$ 0
Composition and Makeup:	
Lann Printing Co.	150.00
Printing:	
National Press Corp.	1,106.00
Mailing:	
Watson Mailing Service	83.98
Postage	262.00
	<hr/>
	\$1,601.98

Copies of available documentation are attached.

9. How many people were on the mailing list for MCFL's tabloid distributed in 1978? How was the mailing list compiled?

A. February, 1978	— 1,976
May, 1978	— 2,109
Special Election Edition	— 58,025

Special Election Edition,  
Complimentary Partial Copy — 0  
October, 1978 — 3,119

The mailing list for the February, May and October 1978 editions of the newspaper was compiled from a list of MCFL's contributing members. The mailing list for the Special Election Edition was compiled from MCFL's list of members consisting of those persons who have indicated agreement with MCFL's statement of purpose, by a variety of ways. The Complimentary Partial Copy was not mailed, due to the fact that there was not sufficient time to guarantee receipt prior to September 19, 1978. That edition was printed for the sole purpose of correcting errors in the full edition's reporting of the voting records of Congressmen Tsongas, Studds, and Drinan. It was forwarded to certain local chapters for hand-delivery.

10. How does MCFL raise funds to conduct its political activities? Does MCFL accept corporate contributions in this regard?
  - A. MCFL raises no funds earmarked for political activities. Funds are raised by a variety of means which include membership dues, annual fund appeal to all those persons who have indicated, by a variety of ways, agreement with MCFL's statement of purpose, annual state dinner, auction and furniture sales, annual raffle, fund raising dinners, wine-tasting and cocktail parties, walk for life, yard sales, dances, MCFL Night at Pops, various other Chapter functions, and sale of red roses. MCFL does not

accept corporate contributions from business corporation. It has, on occasion, accepted contributions from the Knights of Columbus, which may be an incorporated non-profit membership corporation.

11. Does MCFL maintain a separate bank account for its monies spent in connection with federal elections?
  - A. No. MCFL further states that no monies are spent "in connection with federal elections", as the term is used in 2 USC § 441 6.
12. What is the purpose of the "Y", "N" designations for candidates in the attached MCFL tabloid?
  - A. Each non-incumbent candidate for federal office was sent a questionnaire by MCFL seeking a response as to the candidate's position on the following issues: (1) passage of a constitutional Human Life Amendment to overturn the U.S. Supreme Court decisions legalizing abortion on demand; (2) support for legislation to prohibit the use of tax funds for abortions; and (3) support for legislation to provide positive alternatives to abortions. The "Y", "N" and "NR" designations refer to the candidate's responses to these three questions. Thus, there are three such designations next to each non-incumbent's name, one designation per question. "Y" indicates that the candidate's response supports the pro-life position; "N" indicates that the candidate's response opposes the pro-life position and "NR" indicates no response.

13. Was the procedure used in other MCFL tabloids?

A. Yes.

14. How often is the MCFL tabloid distributed? What is the date of the first MCFL tabloid distributed?

A. Since the first newspaper was printed in January, 1973, MCFL has printed a total of 37 newspapers.

1973—3

1974—5

1975—8

1976—8

1977—5

1978—4

1979—4 (to date)

15. Does MCFL accept contributions to be used in connection with federal elections? Does it make expenditures in connection with federal elections? What was the total of such contributions and expenditures during 1978?

A. MCFL accepts no contributions earmarked for use in connection with federal elections. It does use contributions to print newspapers which discuss among other matters, the voting records of incumbents and positions of non-incumbent on life issues. MCFL contends that it makes no "expenditure" in connection with federal elections as that term is used in the Federal Election Campaign Act of 1971.

16. Is MCFL registered with the state of Massachusetts as a political committee? If so, please

submit MCFL's statement of organization and any reports filed with the state of Massachusetts.

A. No. In 1976 MCFL did register as a political committee in connection with opposing a statewide referendum ballot question. Reports filed with the state are attached.

\* \* \* \*



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NATIONAL PRESS CORPORATION  
PRINTERS

251 CAUSEWAY ST., BOSTON, MASS. 02114

*Phone CA 7-4970—Connecting All Depts.*

To Mass. Citizens for Life    DATE August 25, 1978  
313 Washington Street  
Newton, Mass. 02158

Terms: Net Cash    Our No. 5541    Your Order No.

100,000	Election Edition—8 pages	\$2,113.75
	Paid	- 1,200.00
	Balance	\$ 913.75

[Illegible handwritten note]

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NATIONAL PRESS CORPORATION  
PRINTERS

251 CAUSEWAY ST., BOSTON, MASS. 02114

*Phone CA 7-4970—Connecting All Depts.*

DATE September 8, 1978

To Massachusetts Citizens for Life  
313 Washington Street  
Newton, Mass. 02158

Terms: Net Cash    Our No. 5567    Your Order No.

20,000	Special Election Edition—4 pages	\$392.00
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[Illegible handwritten note]

Jean Weinberg  
7 Dartmouth St  
Somerville Mass 02145  
(617) 628-4120

February 22, 1979

To Whom it May Concern,

I, Jean Weinberg, do hereby certify that I picked up the attached newsletter of the organization, Massachusetts Citizens for Life, at a statewide conference of the Massachusetts Chapter of the National Organization for Women. The Conference was held on Saturday, September 9, 1978, at the Anna Maria College in Worcester, Massachusetts. I am not a member of Massachusetts Citizens for Life, nor are any of the other participants in the conference with whom I was sitting. During the lunch break, held in the cafeteria of the college, there was a stack of about 200 of these "Special Election Edition" newsletters out on a counter for the public to pick up and read and take home. In addition, I know of at least one woman, who was also not a member of the organization, went to their statewide office in Newton and asked for additional copies for her friends. These copies were given to her with the knowledge that she and her friends did not belong to the organization.

/s/ Jean Weinberg  
JEAN WEINBERG  
7 Dartmouth St  
Somerville Mass 02145

[SEAL OF NOTARY]

[Illegible] this 23rd [Illegible] February 1979

/s/ [Illegible]

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

Civil Action No. 82-0609-G

FEDERAL ELECTION COMMISSION, PLAINTIFF,

v.

MASSACHUSETTS CITIZENS FOR LIFE, INC., DEFENDANT.

MOTION TO STRIKE OF DEFENDANT  
MASSACHUSETTS CITIZENS FOR LIFE, INC.

Defendant, Massachusetts Citizens for Life, Inc. ("MCFL"), moves that this court strike the letter of Jean Weinberg, dated February 22, 1979, attached as *Exhibit B* to Plaintiff's Memorandum of Points and Authorities in Support of its Motion for Summary Judgment and in Opposition to Defendant's Motion for Summary Judgment. A copy of the letter is annexed hereto as *Exhibit A*.

As grounds therefor, MCFL states that Fed. R. Civ. P. 56(a) provides that a party may "move with . . . supporting affidavits for a summary judgment in his favor." If an "affidavit" is submitted, Fed. R. Civ. P. 56(e) requires that "affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein." The letter of Jean Weinberg fails to satisfy Fed. R. Civ. P. 56(a) and (e) because (i) it does not constitute an "affidavit" since it is not a sworn statement, (ii) it consists largely of hearsay statements that would not be admissible evidence at trial, and (iii) it contains self-serving conclusory statements that would not be admissible evidence at trial. The letter should, therefore, be stricken.

In order to qualify as an "affidavit," a writing must be sworn to before an officer authorized to administer oaths. *Galvin v. Town Clerk of Worcester*, 369 Mass. 175, 177 (1975); *Danis v. Bridge Enterprises, Inc.*, 8 Mass. App. Ct. 930 (1979); 10 C. Wright and A. Miller, *Federal Practice and Procedure*, § 2738 at 702 (1973). Ms. Weinberg's letter, despite the existence of a notary's seal, nowhere indicates that she swore to the truth of the facts stated therein. The effect of the notarization is, at best, to acknowledge Ms. Weinberg's signature. In the absence of a jurat or other words indicating that the contents of the letter were sworn to, the letter fails to qualify as an affidavit for purposes of Fed. R. Civ. P. 56. See e.g., *Williams v. Pierce County Board of Commissioners*, 267 F.2d 866, 867 (9th Cir. 1959) (signed statement is not an affidavit when notary does no more than acknowledge execution); *Inmates, Washington City Jail v. England*, 516 F.Supp. 132, 138 (E.D. Tenn. 1980), *aff'd*, 659 F.2d 1081 (6th Cir. 1981) (a complaint, although notarized, does not qualify as an "affidavit" since it was not sworn to under oath); *Blum v. Campbell*, 355 F.Supp. 1220, 1227 (D.Md. 1972); *Miller Studio, Inc. v. Pacific Import Co.*, 39 F.R.D. 62, 65 (S.D.N.Y. 1965).

Ms. Weinberg's letter also must be stricken because it is comprised largely of hearsay statements which would not be admissible evidence at trial. See, e.g., *Maiorana v. MacDonald*, 596 F.2d 1072, 1080 (1st Cir. 1979); *Lyon Ford, Inc. v. Ford Motor Co.*, 342 F.Supp. 1339, 1343 (E.D.N.Y. 1971); Wright and Miller, *supra*, § 2738 at 689 n.26. In particular, the last two sentences of the letter, which refer to "one woman's" experience with MCFL, are clearly inadmissible hearsay under Fed. R. Evid. 802.

Finally, Ms. Weinberg's letter is based largely upon factually unsupported conclusory statements that certain persons were not "members" of MCFL. Since the letter fails to indicate the facts upon which Ms. Weinberg's conclusions are based, the conclusions fail to satisfy the "personal knowledge" and "admissible evidence" requirements of Fed. R. Civ. P. 56(e). Moreover, the letter fails to disclose the criteria by which Ms. Weinberg measured "membership" status. Since the scope of MCFL's "membership" is an important legal issue raised by the FEC's motion for summary judgment, it is clearly appropriate to strike Ms. Weinberg's conclusory statements on the "membership" status of the anonymous persons referred to in the letter. As stated in *Citizens Environmental Council v. Volpe*, 484 F.2d 870, 873 (10th Cir. 1973), affidavits which are "generalized, conclusory and unsubstantiated" should not be considered since "Rule 56(e), Fed. R. Civ. P., requires personalized affidavits." See also *Roslindale Cooperative Bank v. Greenwald*, 638 F.2d 258, 261 (1st Cir. 1981); *Union Insurance Society of Canton, Ltd. v. Wm. Gluckin & Co.*, 353 F.2d 946, 952 (2d Cir. 1965); *Cohen v. Ayers*, 449 F.Supp. 298, 321 (N.D. Ill. 1978).

By its attorneys,

/s/ Jeffrey R. Martin  
Francis H. Fox  
E. Susan Garsh  
Alexandra Leake  
Jeffrey R. Martin  
BINGHAM, DANA & GOULD  
100 Federal Street  
Boston, MA 02110  
(617) 357-9300

DATED: November 22, 1982



UNITED STATES COURT OF APPEALS  
FOR THE FIRST CIRCUIT

No. 84-1719

FEDERAL ELECTION COMMISSION  
PLAINTIFF-APPELLANT,

v.

MASSACHUSETTS CITIZENS FOR LIFE, INC.  
DEFENDANT-APPELLEE.

MOTION OF THE CIVIL LIBERTIES UNION  
OF MASSACHUSETTS FOR LEAVE TO FILE  
A BRIEF AMICUS CURIAE

Pursuant to F.R.A.P. 29, the Civil Liberties Union of Massachusetts (CLUM) moves for leave to file a brief *amicus curiae* in support of the defendant-appellee. As reasons for this motion, CLUM states:

1. It has received the written consent of the appellee, Massachusetts Citizens for Life, Inc. (MCFL). That consent is attached to this motion as Exhibit 1. The appellant, Federal Election Commission (FEC), has refused to assent to the participation of CLUM as *amicus curiae*. The FEC's letter is attached hereto as Exhibit 2.

2. The FEC's assertion in its letter denying consent that "the district court determined that CLUM lacked the requisite interest for being heard as *amicus curiae*," is erroneous and has no support in the record. The district court denied CLUM's motion for

leave to file a memorandum in support of MCFL's motion for summary judgment without making any finding whatsoever about the quality of CLUM's interest in the case. As to CLUM, the district court simply wrote, "in light of plaintiff's opposition, motion denied." A copy of that order is attached hereto as Exhibit 3. See also J.A.-3.

3. The district court presumably denied leave for CLUM to participate as *amicus* on the basis of this court's statement in *Strasser v. Dooley*, 432 F.2d 567, 569 (1st Cir. 1970), that "a district court lacking joint consent of the parties should go slow in accepting . . . an *amicus* brief . . ." (emphasis added). This statement, however, has no application to participation by *amici* at the appellate level, provision for which is specifically made by F.R.A.P. 29.

4. In this appeal, CLUM has not only its usual interest, as a defender of civil liberties, in the proper resolution of questions affecting freedom of speech; it has also a particular institutional interest in opposing the interpretation of the Federal Election Campaign Act urged by the FEC. That interest is set out in the affidavit of the CLUM Executive Director, John Roberts, which was initially filed with the district court in support of the motion to file a memorandum there, and a copy of which is attached hereto for the court's convenience as Exhibit 4.

5. As set forth in the affidavit of John Roberts, CLUM has a specific direct interest in this appeal. Although not itself incorporated, CLUM is the Massachusetts affiliate of the American Civil Liberties Union, Inc. (ACLU) and CLUM members automatically belong to the ACLU as well. Both CLUM and ACLU, like MCFL, and indeed like many other advocacy organizations, publish the voting records of legislators

and in those publications indicate whether or not the votes were consistent with the ACLU position. Despite the FEC's protestations to the contrary, the interpretation of 2 U.S.C. § 441b that it urges this court to adopt would have profound implications for CLUM and ACLU, as it would for numerous other political advocacy organizations that have been incorporated. See the decision of the district court, slip opinion at 11 (J.A. 492) (FEC's interpretation would render § 441b unconstitutional by applying the statute to "a nonprofitmaking corporation formed to advance an ideological cause and . . . for the purpose of publishing direct political speech").

6. In addition to its particular institutional interest in the outcome of this appeal, CLUM has a longstanding interest in and concern with the defense of freedom of speech, particularly speech concerning government and public affairs. CLUM and ACLU have participated either via direct representation or as *amici curiae* in numerous appeals involving freedom of speech generally as well as in the context of federal elections law. E.g., *Bose Corporation v. Consumers Union*, 104 S.Ct. 1949 (1984), affirming 692 F.2d 189 (1st Cir. 1983); *Buckley v. Valeo*, 424 U.S. 1 (1976); *Rushia v. Ashburnham*, 701 F.2d 7 (1st Cir. 1983); *FEC v. Central L.I. TRIMM*, 616 F.2d 45 (2d Cir. 1980); *United States v. National Committee for Impeachment*, 469 F.2d 1135 (2d Cir. 1972); *ACLU v. Jennings*, 366 F.Supp. 1041 (D.D.C. 1973) (three judge court), vacated as moot sub nom. *Staats v. ACLU*, 422 U.S. 1030 (1975); *Batchelder v. Allied Stores Int'l.*, 388 Mass. 83 (1984). Indeed, defense of First Amendment rights and promotion of their unrestricted exercise has been CLUM's and the ACLU's

primary objective since their founding more than sixty years ago.

For the foregoing reasons, the Civil Liberties Union of Massachusetts respectfully requests leave to file a brief *amicus curiae*. Ten copies of the brief are conditionally filed with this motion.

By its attorney,

/s/ Marjorie Heins  
MARJORIE HEINS  
Massachusetts Civil Liberties  
Union Foundation  
47 Winter Street  
Boston, MA 02108  
(617) 482-3170

January 21, 1985

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

Misc. Action No. 82-0609-G

FEDERAL ELECTION COMMISSION, PLAINTIFF

v.

MASSACHUSETTS CITIZENS FOR LIFE, INC., DEFENDANT

AFFIDAVIT OF JOHN ROBERTS IN SUPPORT  
OF THE MOTION OF AMICUS CURIAE CIVIL  
LIBERTIES UNION OF MASSACHUSETTS  
FOR LEAVE TO FILE A MEMORANDUM

I, John W. Roberts, do hereby depose and state:

1. I am Executive Director of the Civil Liberties Union of Massachusetts (CLUM), which is the state affiliate of the American Civil Liberties Union, Inc. (ACLU), a nonprofit nonpartisan corporation dedicated to defending rights guaranteed under the United States Constitution. CLUM members are also members of the national ACLU.

2. Both the ACLU and CLUM disseminate information about the voting records of legislators, indicating whether or not they voted in favor of or contrary to the civil liberties position. In August 1982 CLUM published in its newspaper, *The Docket*, information about the votes of all Massachusetts Senators on five issues of importance to the defense of civil liberties: the death penalty, public aid to

parochial schools, sale of handguns, therapeutic use of marijuana, and prisoners' rights. The voting records of all Massachusetts Representatives on six issues were also reported: the death penalty, aid to parochial schools, gay rights, the living will, court reform, and the call for a federal constitutional convention. *The Docket* states that CLUM does not rate legislators. A copy of the relevant pages of the August 1982 issue of *The Docket* is attached as Exhibit 1.

3. The publication of the ACLU's Washington office, *Civil Liberties Alert*, routinely reports on and rates federal legislators' voting performance on numerous issues important to the organization. A sample issue of *Civil Liberties Alert* containing these voting records is attached to the defendant's Request for Admissions as Exhibit HH. Both *The Docket* and *Civil Liberties Alert* are distributed to ACLU members as well as to the news media, public officials, and other interested persons.

4. In my work as Executive Director of CLUM, I have observed that numerous organizations comment on the performance of elected public officials. Some of these organizations are in corporate form. For example, the August/September issue of *The Citizen Advocate*, published by Massachusetts Fair Share, Inc., contained a strong attack on Governor King's performance, "Fair Share Looks at the King Record." *The Citizen Advocate* also advised that it did not support or oppose any candidate for public office. The relevant pages are attached as Exhibit 2.

5. Both the ACLU and CLUM constitution and bylaws prohibit support of or opposition to any candidate for elective office. This is a longstanding policy that is vital to our effectiveness. The ACLU and



CLUM believe that to promote civil liberties effectively they cannot take sides in partisan elections but must evaluate elected officials strictly on their records, and by doing so, seek to make all of them more sensitive to civil liberties concerns.

6. Neither CLUM nor any other state ACLU affiliate could set up a political committee as defined in the Federal Election Campaign Act. Not only would it contradict our constitution, bylaws, and philosophy, but it would violate our commitment to our members to preserve their associational privacy. Moreover, the FEC's reporting and disclosure requirements would not be possible for the ACLU to meet, since almost the entire lobbying program of the national and many state affiliates is devoted to commentary on the voting records and performance of legislators. There would be no way to separate out that part of our lobbying activity that the FEC might consider subject to regulation. For all of these reasons, the ACLU, if ordered to register as a political committee and disclose the names of the contributors, would almost surely cease its lobbying and educational work.

Signed under the pains and penalties of perjury this 17th day of September 1982.

/s/ John W. Roberts  
JOHN W. ROBERTS

Sworn and subscribed before me, a notary public, on this 17th day of September, 1982

/s/ John Reinstein  
Notary Public  
My commission expires  
12/12/86

SUPREME COURT OF THE UNITED STATES  
Office of the Clerk  
Washington, D.C. 20543

January 13, 1986

Mr. Charles N. Steele  
Federal Election Commission  
999 E Street, N.W.  
Washington, DC 20463

Re: Federal Election Commission,  
v. Massachusetts Citizens for Life, Inc.  
No. 85-701

Dear Mr. Steele:

The Court today entered the following order in the above entitled case:

In this case probable jurisdiction is noted.

Very truly yours,

/s/ Joseph F. Spaniol, Jr.  
JOSEPH F. SPANIOL, JR.  
Clerk